REAL DEMOCRACY IN OPERATION

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THE EXAMPLE OF SWITZERLAND

BY

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PREFACE

THE majority of those who study the social phenomena and the fluctuations of public opinion resulting from the present war, agree in predicting a considerable advance for the democratic idea. This advance will not consist merely in certain electual reforms which governments will be forced to concede while the war still continues. Almost everywhere it is felt that a more extensive and more energetic participation in the political life and government of the nations by the democracies of those nations will be one of the means of preventing a recurrence of catastrophies such as those which have laid waste a portion of the globe for four years. An Hungarian nobleman, Count Karolyi, wrote to his electors a few days ago: 'The necessary preliminary to the possibility of peace is the democratization of the States, which would, as a result of this, be in opposition to imperialistic excesses.'

Since these lines were written, in August 1918, unexpected events in the theatre of war have precipitated this movement. It is almost unnecessary to call to remembrance the turn which the democratization of the Central Powers has taken within recent times.

There is, therefore, a peculiar interest at this juncture, in surveying the institutions of those countries which in our own time have carried farthest the application of the democratic idea. In this, without doubt, Switzerland leads the way. The practice of direct democracy has been extended there to an extraordinary degree, and the end is not yet. The aim of this little book is to describe the mechanism of the democratic institutions peculiar to Switzerland and to explain the effects of those institutions. It is not intended to be either a scientific treatise of law or a collection of sensational disclosures. During the last few years, more than at any other time, our democratic institutions have been examined both in Switzerland and in other countries by acute and well qualified students. But up to the present there has perhaps been no book in French giving a comprehensive view of the subject, which was written for readers other than politicians and jurists and which might be of interest even outside our own country. Although these pages are intended in the first instance for students of political movements or for those who play an active part in them, the author cherishes a hope that they will be read by others who do not come within either of these categories. This hope has led him to

give to his work a character likely to render it acceptable to those who usually find little to attract them in questions of constitutional law.

I have just said that Switzerland was in the vanguard of democratic evolution. That is consequent upon her origin, her traditions and the distinctly democratic nature of the groups which founded the Swiss Confederation. It is the result, too, of her federal organization. There is not *one* democracy in Switzerland; there are as many democracies as there are cantons and demi-cantons. The twenty-five more or less autonomous states which comprise the Confederation and this Confederation itself are political laboratories, always at work. They are all so many small nations animated by a ceaseless desire to perfect their political organization and to develop their democratic institutions. Politically Switzerland offers a picture almost as varied in its character as it does physically. All forms of popular government are, or have been, practised in Switzerland, and the results of all of them can be studied there at the present time. The cantons borrow one from another those forms of government which appear to succeed best. When some new institution has worked well in the majority of the cantons, the Confederation, in its turn, adopts it and applies it in

its own peculiar province. This was what happened in the case of democratic institutions. It was the cantons that imposed them upon the Confederation. Since it is the federative organization of Switzerland which has permitted this democratic growth, it seems appropriate to begin with a discussion of the Swiss form of federalism.

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I

FEDERALISM IN SWITZERLAND

SWITZERLAND is a federal Republic consisting of twenty-five states, cantons or demi-cantons, which for a long time enjoyed almost absolute sovereignty, but which, especially since 1848, gradually ceded a large part of their sovereign rights to the people of the Confederation as a whole. Before 1848, the federal bond was weak, the central government almost non-existent. The central power was exercised by a Diet, in which all the cantons were represented equally. The members of the Diet could only make decisions in accordance with their instructions from the cantons or after referring the questions to them. The Constitution of 1848—the first permanent Constitution worthy of the name that Switzerland ever had—involved a noteworthy change. After the example of the United States, two Chambers were created, of which one, the National Council, represented the people, and the other, the Council of States, composed roughly on

the model of the old Diet, but without referendum and without instructions for its members, represented the cantons. The two Chambers elected jointly a central executive authority—the Federal Council. Customs and posts were transferred from the cantons to the federal government. A single system of weights and measures was introduced. There was a Federal Court, which, however, was not permanent, and a federal army made up of contingents from the cantons. The Confederation alone had the right of representing Switzerland in foreign affairs. The constitutions of the cantons were subject to ratification by the Chambers.

The Constitution of 1874 added still further to the functions of the central authority at the expense of cantonal sovereignty, and a similar tendency may be traced in nearly all the minor changes which were subsequently adopted. The Federal Tribunal was made permanent. The greater part of the law was unified. The administration of the army was entrusted to the Confederation. The rights of the individual, in particular liberty of conscience and of belief and liberty of commerce and of industry, were guaranteed by the Confederation and placed under the protection of the Federal Council and the Federal Tribunal. The principal railways were nationalized. Popular rights, such as the referendum upon legislation, already in operation in the majority of the cantons, were introduced in their turn into the

Confederation and conferred fresh powers upon the Swiss people.

This new federal State evidently differs widely from the old one. There is federalism and federalism. That which Switzerland practises to-day is of a decidedly diluted character. The federalists of the early nineteenth century would have held it in abhorrence. But in the process of time absolute doctrines must perforce undergo modifications which would have seemed beyond the range of possibility when they were first promulgated.

There has been much discussion among high legal authorities upon the question whether, after so many encroachments, the sovereignty of the cantons still exists. A sovereign power is one which prevails over all others. Can there be two sovereign powers, or is there now in Switzerland but one true sovereignty, that of the Confederation? Can the term sovereignty be properly applied to a cantonal autonomy which is continually shrinking like the wild ass's skin of Balzac's famous novel? To these questions it is replied that sovereignty can be divided: Confederation and cantons are alike sovereign in the particular spheres assigned to them by the Constitution. I leave to others the task of fathoming a problem of purely theoretical interest, and confine myself to stating that the Constitution declares the cantons to be sovereign wherever they have not delegated their

powers to the Confederation. But, as I have just shown, this sovereignty is gradually diminishing, and at the present moment it cuts a poor figure beside that of the Confederation.

The advantages of the federal form of government are well known. In *L'Esprit des Lois*, Montesquieu gives a celebrated definition, from which I quote the following passages:

'If a republic is small, it is destroyed by a foreign power; if it is great, it is destroyed by internal weakness. . . .

'It appears that in the end men would have been obliged to live always under the rule of a single person, if they had not devised a form of constitution which combines all the internal advantages of a republic with the external strength of a monarchy. I refer to the federal republic. This form of government is an agreement by which several political units consent to become citizens of a greater State, which they wish to bring into being. It is a society of societies; and the new society thus created can enlarge itself by including additional members. . . . This type of republic is able not only to resist external oppression, but also to preserve its greatness without internal corruption. The form of this society anticipates all objections. . . . Composed of small republics, the federal State enjoys the goodwill of the governments of all its constituent members; while as for foreign powers it possesses, by reason of the

strength derived from unity, all the advantages of the great monarchies.

For Montesquieu, the aim of the federal state is above all to maintain the existence of small States by means of a league enabling them to resist foreign ambition. In our time the conception of federalism has widened. That of Montesquieu applies rather to the Confederation of States which existed in Switzerland before 1848 than to the federal Constitution (Bundesstaat) which exists there at the present day. I quote from another French writer, P. J. Buchez, who was president of the Constituent Assembly of 1848, a passage which emphasizes the difference clearly: 'The essential characteristic of the federal State, which distinguishes it sharply from the simple Confederation, is the existence of a regularly constituted, permanent government. . . . It is also distinguished by the extension of the central government's sphere of action. This consists no longer merely in combining the forces of all in defence of individual members, in guaranteeing autonomy to each State, and finally in maintaining peace in the last resort between confederate States; it consists also in guaranteeing the personal and political rights of citizens in every State, and in imposing duties both upon the States themselves and upon the citizens.'

The Swiss federal State goes beyond the definition given by Buchez. Besides the objects speci-

fied, the second article of the Constitution mentions the furtherance of common prosperity, and thus adds to the purpose of the central authority the realization of political, economic and social progress, which is beyond the scope of the cantons on account of their small size.

No one has spoken upon federalism with greater acumen than J. Dubs, of Zürich, a member of the Federal Council before 1872 and one of the few German-Swiss statesmen of our time who have given their adhesion to the principle. I have more than one quotation to make in this chapter; but this one, I believe, is particularly relevant, coming, as it does, from a man who for many years played a brilliant part in the political affairs both of his canton and of the Confederation. 'The federal State,' wrote Dubs in his *Manuel de Droit public*, 'combines two things which used to appear incompatible, the unity of national power and the maintenance of the widest individual liberty. In a great unitary State, the first of these elements often develops more effectively, but the necessary complement of such a political system is a stricter general order in all spheres, supported by an army, a police force, and bureaucratic institutions which leave little freedom to the individual and can only grant any true measure of liberty at the risk of its degenerating into license. In the small cantonal State, on the other hand, the individual life of localities, districts and persons and their

individual liberty have the fullest scope for free development. Within its narrow boundaries, this State fosters in us an appreciation for well-ordered administration and forms enlightened citizens, honest workmen, and a people acting disinterestedly for the common good. Survey the countries of the world: you may find elsewhere greater political achievements, but assuredly in no country will you meet so many good citizens of independent opinions and sound practical judgement; nowhere so great a number of public men who succeed in fulfilling their functions in minor spheres with dignity and skill; nowhere so large a proportion of persons who, outside their daily round, interest themselves so keenly in the welfare and in the difficulties of their fellow citizens, who take so cordial a share in all their country's rejoicings and display so active a sympathy in all public misfortunes. . . . It is to the small cantonal State that we owe the possession of this rich treasure; in it we have a school for our political life. .

One thing is certain: no form of constitution is more appropriate for Switzerland than the federal. With his penetrating glance, Bonaparte had no difficulty in discerning it when the one and indivisible Republic imposed on Switzerland in 1798 had ended in lamentable failure. His Act of Mediation restored federalism. In the audience which he gave at St. Cloud on the 12th December

1803, to the Swiss delegates who had come to collaborate in the drafting of this Act, the First Consul explained with remarkable force the motives which must rally them in favour of federalism. 'The more I reflect on the nature of your country and on the diversity of your constituent elements,' he told them, 'the more I am convinced of the impossibility of subjecting it to a uniform system; everything leads you towards federalism. Consider, for example, the difference between your mountaineers and your townspeople. Would you wish to compel the democratic cantons to live under the same government as the towns, or on the other hand would you dream of introducing pure democracy into the latter, into Bern, for instance? The unitary system requires for its maintenance a permanent armed force, which would have to be paid; and your finances could not support the burden except by heavy taxation. Your people does not like taxation. . . . You are not in a position to establish a central government. Lucky circumstances have placed me at the head of the French Government, but I consider myself incapable of governing the Swiss. Already you have difficulty in finding a president (*Landammann*). If he comes from Zürich, the people of Bern are dissatisfied, and vice versa; if you elect a Protestant, the Catholics will oppose. And when you had found everything to meet your desires, if I happened to make some demand upon

the central government, it would have to grant it to me. If, however, I have to address myself to an isolated canton, each one declares the matter outside its competence; the Diet has to be summoned—this takes two months—and the storm passes. I am speaking to you as if I were a Swiss myself. In small States, the federal system confers unquestionable advantages. I myself come from a mountainous country. I know the spirit which inspires your countrymen: no unity, no troops, no finances, no diplomatic representatives in other States. Switzerland has to confine itself to the good administration of its domestic affairs; its pride must be in the triple equality of canton with canton, of the townspeople one with another, and of the towns with the country, and for the rest it must rely upon the friendship of France.'

The federal theory of Napoleon was in conformity with his plan of keeping a weak Switzerland in dependence on a powerful France. At the present day, contrary to the prediction of the First Consul, Switzerland possesses a central government, an army, a diplomatic service and a debt which the mobilization of troops necessitated by the war of 1914–18 has increased tenfold; but there is much truth in what the Mediator said in relation to the Switzerland of his time, and it remains true that in a country so lacking in any kind of uniformity as Switzerland, with its differences of race, language, religion, habits and occupations, some

type of federalism is a necessity. So diverse a population requires not a single political system, but institutions which take the widest possible account of these multifarious differences and leave a broad measure of liberty to all.

During the last thirty years, a tendency towards centralization manifested itself in Switzerland so pronouncedly that the country might easily have found itself transformed into a unitary State. There appears now to be a slight reaction, and it seems to be better appreciated that in renouncing federalism root and branch the loss in union and internal strength would exceed any conceivable gain in material advancement. A short time ago an eminent professor of Zürich University, M. Fr. Fleiner, demonstrated conclusively that federalism is an essential condition for the existence of Switzerland, and that it would be a grave mistake to despoil the cantons of all power and suppress their entire political life. 'In the Swiss federal State,' wrote the Zürich professor, 'the defence of federalist ideas has resulted, from the point of view of politics, in protecting the Catholic minority against the Liberal and Protestant majority, and also in protecting the French and Italian minority against the German-speaking majority.' Although the Confederation has provided effective guarantees for the personal rights of Swiss citizens, the cantons form the basis of the country and its democracy, and from them the Confederation has borrowed

institutions which give a large measure of direct control to the people. M. Fleiner recalls Jacob Burkhardt's happy remark: 'The small State exists to provide one spot upon the earth where members of as many nations as possible may be citizens in the complete sense of the word.' The preservation of this civic culture is, indeed, one of the chief services which the cantons perform for themselves and for the Confederation of which they form part. Furthermore, the Federal Constitution enshrines the principle that German, French and Italian are the national languages of the Confederation. Now, the fact that in Western Switzerland and in the Ticino district the French and Italian elements are definitely and permanently incorporated in cantons, enables them to erect a barrier of public law against German, which is a far better safeguard for these two languages and civilizations than any they could hope to enjoy in a unitary State. Switzerland, it must be remembered, is compensated for the smallness of her territory by the diversity of her spiritual characteristics and the richness of her three cultures, each of which, through the cantons, is guaranteed representation in the federal political institutions.

M. Fleiner concludes that, although the two terms centralization and federalism are almost invariably used in antithesis in modern discussions, they are discovered upon closer examination to be complementary to each other; and that the pros-

perity and progress of the Confederation depend upon their working together in harmony. This conclusion appears sound. National consciousness is a necessity; but cantonal consciousness, too, has a useful part to play, so long as it does not degenerate into selfishness and parochialism.

The Vaudois writer, Eugène Rambert, gave a very happy definition of this aim of Swiss federalism: 'A German majority tolerating a French minority, a Protestant majority tolerating a Catholic minority, a certain number of relatively strong and populous States sailing with the vanguard down the stream of modern life, tolerating the slowness of the old pastoral democracies where centuries are but as years—that is the mission imposed by Nature upon Switzerland.' Very apposite, too, is the formula of M. P. Seippel, who says that the national ideal of Switzerland is to light the path for the nations of the world by proving that it is possible to weld into a free and fruitful unity diverse races, diverse languages and diverse cultures.'

The division of sovereign powers between the Confederation and the cantons constitutes the principal difficulty of the federal system as it exists in Switzerland to-day. The Swiss system is unique in that the sphere of the central authority and that of the cantons are not separated into water-tight compartments, as, for example, in the United States. There are certain sections of the administration

which have been entirely centralized and in which the Confederation enjoys the sole control of a staff of officials and workmen; the customs and postal service are examples. In others—such as civil law—the Confederation legislates, but the cantons organize the courts and appoint the judges, who, at least in the first instance, administer the law. For the execution of very many federal laws, the military laws among others, the Confederation has no agents of its own and makes use of the officials of the cantons, which are to this extent placed in a subordinate position in relation to the federal authority. Elsewhere, notably in elementary and secondary education, direct taxation, relief of the poor, local organization and the bulk of public works, the sovereignty of the cantons has remained almost intact. Opportunities for friction are not lacking, but in normal times any difficulties which may arise are overcome with little effort.

Of late, the competence of the Confederation has increased to such an extent that the federalists, fearful of soon witnessing the complete triumph of the unitary system, have on several occasions sounded an alarm. The extension of federal powers was not brought about by theoretical considerations. It sprang from the necessities of the situation and nearly always corresponded with indisputable public interests. Every time the question of centralizing anything or making anything uniform is raised in Switzerland, good argu-

ments are discovered in abundance. The centralization of military training explained itself. That of law, especially of law relating to commerce, was imposed in the name of very urgent needs. Twenty-five systems of civil law in a country of less than four million inhabitants created numerous complications and hindered intercourse between citizens of different cantons. The recent war demonstrated the great value of the National Bank and of a uniform issue of banknotes. The nationalization of the railways was demanded for weighty reasons ranging from military defence to the development of the system and the services it was called upon to render. In the domain of hydraulic power, where streams and rivers simply ignore the boundaries of cantons, federal legislation was a necessity. Food control could not stop at cantonal boundaries without running the risk of evasion at every turn. For the purpose of patent laws, the protection of forests and public insurance, the sphere of action of the canton was seen to be inadequate. And so forth. But where will it end? According to the extreme partisans of centralization, there is no end. The last remnants of military administration in the cantons, judicial organization and procedure would all be centralized; the Confederation would interfere in elementary education, in the relief of the poor, and in the affairs of local authorities within the canton; it would levy a direct tax; it would create a

federal police, etc. The slope is extremely slippery; one step is all that is required.

Buchez, whom I quoted just now, foresaw this evolution. 'It appears,' wrote he, 'that the establishment of a permanent and regularly constituted central authority, which in a word forms the government, must surely involve the transformation of a Confederation of States into a federal State, and of a federation into a unitary State; that is to say, it must involve the conversion of States which at first are completely independent into united States, and then of the latter into mere provinces, or in other words into local administrative authorities enjoying simply the kind of autonomy requisite for the free and efficient discharge of public business. A government is necessarily an institution of progress. However moderate it may desire to be, whatever suspicions it may entertain about its own tendencies, *which are to increase its power incessantly*, nevertheless it will go forward. It will act; and when its activity is not absorbed by foreign affairs, it will have to exercise firmness in domestic matters. . . It will be the representative of some idea or of some doctrine whose triumph it will strive to achieve. Thus it will inaugurate the work of unification, and in the end by gradual stages it will fashion a single State out of a number of States or a single people out of a number of peoples, as the case may be. . . .'

But then what becomes of the benefits of federalism and of the political life of the cantons? There is something contradictory here: every State is urged forward, pursuing its aims and extending its activities, while at the same time, for the maintenance of some degree of federalism, the Confederation must call a halt at a given moment and voluntarily renounce all further enlargement of its powers.

Louis Ruchonnet, one of the most remarkable statesmen produced by the French part of Switzerland, used to say that whatever the Confederation could undertake better than the cantons should be ceded to the Confederation, and whatever the cantons could undertake better than the Confederation should be left to them. The principle is sound, but rather elastic. There are cases in which differences of opinion will arise upon the expediency of its application, and also upon the results of the activity of the respective authorities. The Protestant cantons would raise no objection to the interference of the Confederation in elementary education. The Catholic cantons and the French-speaking cantons, however, would oppose it energetically. In addition, most measures of a centralizing character unfortunately result in increasing the number of officials, strengthening the bureaucracy and adding to the class of citizens who, owing to their almost exclusive dependence on the central authority, are incapacitated from

appreciating any needs other than their own. This consequence was illustrated quite recently in the alacrity with which federal officials have accepted the idea of the permanent imposition of a direct federal tax, the introduction of which would be one of the most serious infringements of the privileges still enjoyed by the cantons.

Happily for federalism, the centralizing tendency is confronted with obstacles, the importance of which is not to be despised. Among these is the referendum which, on more than one occasion has scotched premature attempts in the direction of centralization. I shall deal fully with this in a later chapter. Every amendment of the constitution requires a majority of votes both in the whole country and in a majority of cantons. This provides an effective safeguard against excessive centralization. Although the Catholics are mainly concerned for the protection of their schools and the confessional, they have combined more than once with the French-speaking minority to administer a check to inopportune centralization. These two minorities, for example, succeeded in 1872 in defeating a constitution which was of too centralizing a character for the time. Another check—and the one which ought to be the strongest—is the realization of the advantages derived from the political life of the cantons and of the risks incurred by an over-rapid centrali-

zation which might shatter the internal harmony of the country.

A Zürich historian, M. Nabholz, lectured recently on the struggle in favour of centralization in Swiss institutions from 1291 to 1848. After showing the triumph of *extreme* federalism in the origin of the Constitution and the resultant obstacles to its logical development for centuries on end, he comes to the conclusion that the majority of the Swiss people, in exercising within the federal State the power of imposing laws upon a minority, must be conscious of the danger involved in an ever greater extension of the competence of the federal authority at the expense of the cantons. Its duty, he urges, is by its own exertions and good judgement to prevent modern Switzerland from following in the footsteps of the federal Switzerland of former times; let her beware of narrow doctrinairism and of applying the dominant principle in extreme cases. Along that path lies the risk of stifling the characteristic activities of the people and, ultimately the very disaster to which she was brought by a narrow and exaggerated federalism.

Nothing could be more to the point.

If I were asked to suggest a suitable policy, I should say that for a new centralization or unification to be justifiable it must be unquestionably indispensable and it must serve some obvious national interest. The federal idea should predominate in doubtful cases. Moreover, one must

be careful not to outrun public opinion, or, as E. Rambert said, not to exceed the degree of centralization or unification compatible with the spirit of the age. 'Some measures of centralization which have made their appearance prematurely have been carried twenty, thirty or forty years after their first rejection. If progress is to be generally acceptable, it must be slow and free, and the people must have time to adapt themselves to the new order.' The less the Confederation develops into a bureaucracy, the more chance it will have of escaping unpopularity and resistance. Whenever it can make use of the cantonal organization, it should do so, even at the cost of some inconvenience. Finally, it must shun like the Devil anything which might be construed as an attack upon that precious equality of the national languages which is one of the very foundations of our union.' M. Virgile Rossel summed up exactly the guiding principle of a sound federal policy when he wrote in a recent article in *La Bibliothèque universelle*: 'Every act of centralization which is not ruled by the supreme aims of the State saps the strength of true equality among the races, and excites distrust and bitterness fatal to federal goodwill. Switzerland loses in union what she gains in unity.'

Evidently the federal or federative State is a somewhat complicated institution in which the statesman can only succeed by means of com-

promise. Nevertheless I consider it the political system of the future. Many great countries seem to be tending towards a federative organization. It is so with the British Empire; it may be so with Russia, Austria-Hungary and the Balkan States. At the moment, the Swiss Confederation—the eldest of all—and the United States of America represent the completest types of this political organization. They are, and have long been, free and democratic Confederations. While Switzerland is a federative State, she is also pre-eminently a democratic State. I shall examine later the democratic features which are so strongly marked in its institutions. And here I will end a chapter which Sterne would have called the chapter of quotations.

II

THE EVOLUTION OF DEMOCRACY IN SWITZERLAND

If there is one principle upon which all the people of Switzerland are agreed, it is the principle of popular sovereignty. Mountaineers of Uri, embroiderers of St. Gall, wealthy manufacturers of Zürich, agriculturalists of Bern and Vaud, watchmakers of Neuchâtel, financiers of Basel and Geneva, Liberals, Radicals and Socialists, Catholics and Protestants alike—all of them, divided as their opinions are upon so many questions, admit to-day that sovereignty rests with the people, and that a democratic system is the most suitable of all for Switzerland. It was not always thus throughout Switzerland; but democracy flourished at the dawn of Swiss history, and, after a partial eclipse which in some cantons lasted for centuries, it flourishes again at the present stage of the country's historical and political evolution. It would seem as if republicanism and democracy were in the air we breathe, and that our lofty mountains have inspired in our people that spirit of independence in which they have so rarely

been found wanting. This characteristic was prominent as early as the time of the Helvetii, on the occasion when their chief, Orgetorix, took his own life rather than suffer execution because the people suspected him of aspiring to the position of king. Later, at the end of the thirteenth century, when the mountaineers and peasants of Uri, Schwyz, and Unterwalden banded together in a defensive alliance against the ambitions and oppressions of the house of Habsburg, the institution known as the Landsgemeinde was already in existence in their land. In the Landsgemeinde the freemen of the community made their own laws. In the thirteenth and fourteenth centuries, the Landsgemeinde, with more or less extensive powers, is found not only in Uri, Schwyz, and Unterwalden, but also in Zug, Glarus, Appenzell, Urseren, Einsiedeln, Engelberg, Hasli, and Obersimmenthal, in Toggenburg, Bellinzone, in the Blenio valley, as well as in the lands of the Archbishopric of Basel, situated among the Jura Alps. The Landsgemeinde of Toggenburg numbered up to 10,000 participants.

Historians connect the Landsgemeinde with the analogous institution of the Germanic folkmoot; but whereas the latter gradually declined and lost its prerogatives, the Swiss communities succeeded in consolidating and extending theirs. The Swiss Landsgemeinden became autonomous courts of justice and assemblies in which laws were passed

and all the important business of the State transacted. They were even thrown open to those hitherto excluded on account of their inferior legal status. It is extremely interesting to trace the development of this democratic institution from that time to the present, when it still exists, at least in the primitive cantons, with many of the powers which it formerly exercised. Of the course of this democratic evolution in the various cantons, great and small, I can here give only a short summary. Those readers who require fuller details will find them in the book by M. Th. Curti on popular legislation in Switzerland.[1] Moreover, in my rapid survey of the outstanding features of the subject, I shall follow M. Curti's treatment.

The city-republic of Bern had no Landsgemeinde, but during the fifteenth and sixteenth centuries we see it recognizing to some extent the principle of popular sovereignty by adopting a method of consulting the people similar to that which to-day we call the referendum. At the time of the religious strife of the sixteenth century, highly important questions concerning the enlistment of mercenary troops, alliances with foreign States, the celibacy of priests and the different articles of faith, were decided by the majority of the people. The voting took place in the open air on the public spaces of each ward, often under the direction of the members of the Council. Usually from the

[1] Translated into French by M. J. Ronjat.

age of fourteen, every man took part, and the function of the Councillors was to see that no qualified person failed to vote. The results for the whole State of Bern were calculated by counting the votes by wards; each ward, whether its inhabitants numbered 100 or 1,000, counted the same. It was by this very system, known as the 'Plus,' that the manors in Vaud belonging jointly to Bern and Fribourg, had to make their choice between Catholicism and Protestantism. The 'plus' resulted in the adoption of Protestantism by the district of Orbe and the retention of Catholicism in Echallens. But when the patricians of Bern felt strong enough, they ceased to have recourse to the referendum and themselves assumed the sovereign power without restriction. From 1653 until the nineteenth century the people of Bern were consulted no more.

In Valais, too, there existed a kind of referendum, the federal character of which is easily explained by the internal diversity of the country. Twice a year, in December and May, representatives of the seven *dizains* or districts met in Council together in the episcopal castle of Majorie at Sion. There they made decisions *ad referendum*, that is to say, subject to ratification by their compatriots. The voting power of the *dizains* was equal. Institutions providing for the consultation of the people existed also in Grisons and Zürich. Unfortunately, at Zürich as at Bern, and elsewhere,

oligarchic intrigues got the better of these popular rights and substituted for them the almost unlimited domination of the urban aristocracy.

At Geneva, the power of legislation belonged to the whole body of citizens in the General Council. No discussion was permitted, and the votes were taken individually and orally by the officials deputed to record them. The aristocracy of Geneva laboured unceasingly to restrict this privilege, which intrepid citizens defended with a passion which in 1707 cost a lawyer, named Fatio, and a number of others their lives. One of the upholders of the rights of the people, Jacques Barthélemy Micheli, was degraded from the nobility and deprived of all his property. He was condemned to death, but his life was spared and he remained for eighteen years a prisoner in the hands of the oligarchy of Bern. Micheli was one of the harbingers of modern Swiss democracy. He urged the adoption of the popular initiative and desired that the people should enjoy facilities for expressing approval or disapproval of the decisions of the Council. These efforts were not in vain. In 1738, through the mediation of France, Zürich and Bern, the people of Geneva received a constitution which restored to the General Council the power of legislation, that is, the power to accept or reject proposals for new laws or amendments to existing laws. To these champions and martyrs of the cause of

popular sovereignty must be added the name of Henzi, a citizen of Bern, executed in 1749 for attempting the overthrow of the Bernese aristocracy. He left a memoir in which he demanded that the governing body should be elected by the people; that laws should merely be drafted by that body and always submitted to the general assembly of the people for approval or rejection. It is not good to be in advance of one's age, even in regard to constitutional rights which were accepted almost without question in earlier ages.

It would be inexcusable to proceed with the story of Swiss democracy without some reference to the famous eighteenth-century writer whose works, after exerting an enormous influence on the French Revolution, have become, as it were, the gospel of modern democracy. In his *Contrat social*, published in 1762, Jean-Jacques Rousseau proclaimed and defended brilliantly the principle of popular sovereignty, the theory and practice of which he illustrated from the history of the ancient world and of Geneva. With strictly logical reasoning, he declared himself against every kind of popular representation in the making of laws. For Rousseau, legislation must be the expression of the general will. The latter includes all particular wills without exception. The right is the same for everybody. This general will cannot be alienated, and representation is a form of alienation. A representative is a person or collec-

tion of persons which the nation substitutes for itself to act for it and to which it assigns all its powers. But, under this system, the nation is free only upon the day of the election, after which it is at the mercy of its representatives. This amounts to at least a temporary alienation of national liberty. The nation, he contended, may quite properly have commissaries, mandatories or officials provided that their mandate is specific and revocable and their responsibility effectively determined; it may not have representatives who substitute their will for its own. As for the practical difficulty of gathering together the entire people in large countries to pass laws, Rousseau did not solve it. Instead of going on to consider the referendum and initiative, he concluded that the sovereign people cannot continue to exercise its powers unless the State is very small.

It was left to the French Revolution to attempt the first practical application of Rousseau's theories of popular sovereignty, and then to contemporary Switzerland to work them out thoroughly and methodically. An early experiment with the principle was made in France when the Constitution of 1793 was submitted to the people and accepted in the towns and departments which were not occupied by the enemy by 1,601,918 votes to 11,610. This was the first occasion on which voting took place over a wide area. The Constitution gave to the people the right to

protest against laws proposed by the representative body; with this 'veto' I shall deal later in connection with St. Gall. This Constitution, however, remained a dead letter. The doctrine of the famous revolutionary theorist, Gracchus Babœuf, and his following, received no better consideration from the makers of constitutions. This school insisted that legislators should confine themselves to drafting the laws, which were to be submitted to the people in what they called assemblies of sovereignty. They also desired to confer upon the people the right of proposing new laws and repealing old ones, i.e. the popular initiative so frequently made use of in Switzerland for over fifty years.

The ephemeral unitary Constitution of the 20th May 1802, although it scarcely came into operation, forms an epoch in the history of the rights of the people in Switzerland. It was the first to be submitted to a popular vote. Thus it marks the introduction of the referendum on constitutional questions. This Constitution was drafted by a number of influential leaders and submitted to a vote of all citizens over twenty years of age. The vote took place locally; voters were given four days in which to record their acceptance or rejection in the official registers. The votes of those who abstained were counted as in favour of acceptance. It was to this provision that the Constitution owed its adoption.

72,453 citizens replied in its favour, and 92,423 against it; 167,172 abstained from voting.

The early part of the nineteenth century was not favourable to popular rights. In a number of cantons the conservative and aristocratic parties had regained the upper hand, and many Liberals, disgusted by the excesses of the French Revolution, were inclined to see in the representative system the *ne plus ultra* of democracy and the means of assuring the ascendency of the most enlightened in the sphere of legislation. The revolution of 1830 was required to give fresh motive power to the democratic idea. Under inspiration from France, many cantons revised their constitutions, adopted universal suffrage in place of a narrow electoral qualification, proclaimed equal rights for town and country, freedom of the press, freedom of industry, etc. The initiative in legislation was no longer monopolized by governments, but shared by them with the Great Councils.

In 1831, the system of popular legislation scored a decisive success with the institution of the veto in the canton of St. Gall. This veto, an imperfect and complicated form of the referendum, was applicable to all proposals affecting civil or criminal law, to treaties, and to general measures of finance and administration. Laws came into operation 45 days after their promulgation unless the people refused to accept them. This refusal was brought about in the following way. Fifty citizens of a

commune could requisition the holding of a meeting of the commune. If at this meeting the proposal obtained a majority, all the citizens of the commune, including those who had voted against it, were counted as in favour of acceptance. If on the contrary there were a majority against the proposal, only those who had voted against it were counted as opposing it. Those who did not attend the meeting, were counted as in favour. When, in the whole of the canton, the number of votes against the proposal reached a majority of the electorate, the proposal was rejected.

This veto was instituted, with some variations, in 1832 in Basel-Stadt and in 1841 at Lucerne. Valais also introduced it into its constitution in 1839, and later in 1844 in a form approximating more closely to the referendum: the citizens decided, in their primary assemblies, upon laws, military capitulations, financial resolutions and conditions of the grant of citizenship.

In 1845, the canton of Vaud took a decisive step in the direction of immediate democracy after a revolution which substituted a Radical for a Liberal government. After long discussions in which opinion turned in favour from the veto to the optional referendum and then again to the initiative, the Constituent Assembly adopted the proposal of Louis-Henri Delarageaz which established—for the first time in Swiss cantons having a representative system of government—the

constitutional and legislative initiative in the widest conceivable form. The general assemblies of the communes were empowered to vote upon 'any proposal' which was submitted to them by the Great Council acting spontaneously or on the demand of 8,000 citizens. Any changes in the Constitution were compulsorily submitted to a popular vote. Thus 8,000 citizens were able to place before the whole electorate not only all laws and decisions emanating from the Great Council, but also constitutional, legislative or administrative provisions of every kind which they cared to formulate themselves; the popular vote was of right. With one bound the canton of Vaud leapt to the extreme limit of the right of popular initiative. Its great neighbour, the canton of Bern, adopted the optional referendum in 1846 and so restored to its Constitution the right which the Bernese aristocracy of the sixteenth century had succeeded in confiscating.

Progress realized in cantonal institutions often passes after some years into federal institutions. The Federal Constitution of 1848 provided that amendments should be subject to a compulsory referendum. Henceforward the Constitution could be altered at any time if required by the Chambers or by 50,000 citizens to be submitted to a vote of the people and of the cantons.

After 1848 direct legislation by the people now gained and now lost ground, but the setbacks

were the less frequent. Shortly after 1848, the cantons of Zug and Schwyz abolished their Landsgemeinde and adopted in its place the referendum together with the initiative upon constitutional questions. Other Landsgemeinden lost some of their powers. Valais, where constitutional legislation seems highly unstable, adopted representative institutions. But in Thurgau the veto was instituted in 1849 and in Schaffhausen in 1852, while in 1852 Valais again adopted a referendum confined to financial questions and at the same time gave to 6,000 citizens the right of initiative in constitutional matters. In the same year, Aargau accorded to 5,000 citizens the initiative in general legislation and to 6,000 citizens the initiative for obtaining a total or partial revision of the Constitution. In 1858, after finally shaking itself free from the domination of the King of Prussia, Neuchâtel retained its representative institutions with the addition of a referendum upon any loan or financial engagement exceeding 500,000 francs and upon any change in the basis of the organization of the Church. In 1861, Vaud reduced to 6,000 the number of signatures required for the initiative and decided that every loan of a million francs or more should be compulsorily subject to a vote of the people.

A fresh advance was made in 1863 by the demi-canton of Basel-Land. The veto and the referendum upon legislation had hitherto been

optional. Basel-Land introduced the compulsory referendum. All laws and decisions of general application voted by the Great Council had to be submitted to the people thirty days at the earliest after their publication in the official gazette.

The zenith of the movement was reached in 1869 in the canton of Zürich, governed at that time by a progressive party which included many able men but had called forth the denunciations of its opponents by a tendency to degenerate into cliques and to exhibit that contempt for popular aspirations which was one of the causes of its downfall. The opposing party, which had taken the title of 'democratic,' obtained a strong majority in the Constituent Assembly and drew up a Constitution in which are to be found all the popular rights which since then have been adopted by the other cantons. Sovereignty was taken from the Great Council, which had been practically all-powerful, and restored to the people. Popular election was extended with but few exceptions to all political, administrative and judicial authorities. The Constitution recognized the right of the people to take its share in legislation by means of the compulsory referendum and the initiative. Few subjects were exempt from the compulsory referendum, and the initiative appeared in the threefold form of a legislative proposal supported by 5,000 citizens, a resolution presented by 5,000 citizens, or a petition addressed to the Great Council

of the canton by a private individual or a public authority and supported by one-third of the members of the Council.

The reforms carried out at Zürich had an immediate influence upon the canton of Thurgau, which completed the revision of its Constitution some months even before Zürich, adopted the compulsory referendum operating twice a year and the initiative in a form permitting 2,500 citizens to requisition the making or the amendment of a law or a decree. In the same year the canton of Bern introduced a compulsory referendum applying to all laws and to resolutions of the Great Council resulting in the expenditure of 500,000 francs upon any one object. The people of Bern were unable to make up their minds to accept the initiative, but Solothurn adopted it in a form almost identical with that of Thurgau. A year later, Aargau joined the ranks of the cantons having a compulsory referendum. In 1869, the optional referendum was introduced at Lucerne and extended to financial decisions involving an annual expenditure of at least 20,000 francs or an extraordinary expenditure of at least 200,000 francs.

It was during this period that the right of recall, as applied to the Great Council or the government or both, first came to the fore. It was introduced in 1852 in the cantons of Aargau and Schaffhausen, from which it passed to several

other cantons. The number of citizens needed for requisitioning a vote upon the question of the recall of the Councils varied from 1,000 to 6,000.

At the time of the revision of the Constitution in 1872 and 1874, it was natural for the partisans of popular rights to endeavour to have such provision inserted in the Federal Constitution, in which they only existed since 1848 in the form of a limited constitutional referendum. They encountered stubborn opposition from the federalists, who were anxious about the effects which the development of legislative functions by the Swiss people considered as a whole might have upon cantonal sovereignty. Ultimately, Article 89 of the Constitution as revised in 1874 established an optional referendum upon federal laws and decrees of general application (German: *allgemein verbindlich*) and not of an urgent character. Experience was to show that this elastic formula left very considerable scope for arbitrary action on the part of the federal Chambers. It was interpreted as excluding a popular vote on financial credits, loans, military credits, subsidies for river improvements, etc.

Finally, in 1891, by a partial revision of the Constitution originating in the Chambers and ratified by a majority of the people and of the cantons, the right of the people to demand the partial, and not merely the total, revision of the Federal Constitution, was inserted in the latter.

The signatures of 50,000 electors were sufficient to challenge a vote of the people either on the general question or on the text of the proposal presented by the petitioners.

From that date, the flood of popular legislation has not ceased to rise. Apart from the canton of Fribourg, the last stronghold of representative democracy, where the rights of the people are restricted practically to the election of the Great Council and to the total or partial revision of the Constitution, all the cantons enjoy at the present day the referendum upon constitutional changes and legislative proposals in either the compulsory or the optional form, as well as the initiative; and there are now only two—Valais and Fribourg—in which the State Council (the executive power) is still elected by the Great Council. It is clear that since the beginning of the nineteenth century the extension of popular rights has pursued its course slowly at the outset, but constantly and almost uninterruptedly. If exception is made of the abolition of two Landsgemeinden, there has been scarcely any retrogression save upon secondary points. In the end the movement has affected all the cantons, the French-speaking as much as the German-speaking. At this stage I am only concerned to establish the fact; I shall deal later with its causes and effects.

III

THE LANDSGEMEINDE

AN account of the form which democracy takes in Switzerland would be incomplete without some consideration of the ancient institution known as Landsgemeinden. These political assemblies, comprising the whole of the citizens of the State, have no parallel in Europe. With one interruption of a few years following the French invasion of 1798, they have been in existence for more than six centuries, and in almost all their essential features they remain just as they were at the dawn of Swiss freedom. In his *Alpes Suisses*, Eugène Rambert has made a very thorough study of this institution. He has been present at many Landsgemeinden, consulted the original documents and questioned the people most competent to supply information. From many points of view, he has said the last word on the subject, and I shall borrow largely from his work in the pages which follow.

The Landsgemeinden are the offspring of the medieval communes, of those free communities which valiantly maintained their struggle for existence in the midst of unbridled selfishness. Switzer-

land is the only country in Europe where they have given rise to free and lasting political institutions. The Landsgemeinde is all that remains of the vast organization of federated societies of which we catch a glimpse in the middle ages. The commune of olden days, grown now to the dignity of a canton, comes to life again in the solemn assembly deliberating under the vault of heaven.

Rambert divides the history of the Landsgemeinde into two periods: first, what he calls the early period, extending from primitive times to the collapse of the old Confederation, and then the modern period, the duration of which is rather more than a century.

The first Landsgemeinde of which there is any definite record occurred towards the end of the thirteenth century, in 1294. Assembled in their Landsgemeinde, the people of Schwyz pledged themselves upon oath to maintain certain prescriptive rights touching taxation and the alienation of landed property. There is every reason to believe that Uri and Unterwalden also possessed regularly organized Landsgemeinden looking upon themselves as sovereign. The pact which sealed the independence of primitive Switzerland in 1291 was concluded by the men of the valley of Uri, the 'community' of the valley of Schwyz and the 'community' of the men of Entremonts in the lower valley. Doubtless this pact was ratified by the assemblies of the people. The separation of

Unterwalden into Obwalden and Nidwalden was admittedly decided in the Landsgemeinde in the middle of the twelfth century. The communities of Gersau, Urseren and Zug would not have been formed without the example and assistance of the Forest Cantons. That of Zug was their work. Those of Glarus and Appenzell imitated them freely. In this way there sprang up in medieval times quite a colony of free democracies in the full sense of the term. They possessed regularly constituted governments, and wielded powers which shortly became almost absolute, but which, nevertheless, was very likely to be exercised properly, if it is true that the interest of the majority coincides more often with the interest of all than that of an aristocracy or a monarch. But pure democracy, like every other form of government, is subject to the inherent laws of its existence, which it may not violate without falling into decay. An easy clue to these is provided by the history of this institution.

The Landsgemeinden of 1315 are accepted as the first of the series of sovereign Landsgemeinden. From the very origin of these assemblies, their conservative character and the importance which they attached to certain traditional forms are apparent. The Landsgemeinden, which are the soul of pure democracy, have changed but little. The earliest probably fulfilled the functions of a court of justice. In passing judgement, they began to

lay down rules, define custom and interfere in current affairs. The Council, sitting beside them, does not appear in the formula of treaties of alliance till 1352. In the towns, at Lucerne, Zürich, and Bern, it is the Council which provides the motive power and forms the corner-stone of the constitution; in the rural cantons, on the other hand, everything springs from the community, and the Council is merely an administrative machine, the need for which is slowly felt as affairs increase in complexity.

The age of admission to the Landsgemeinde was at first fourteen years. The oath of allegiance used to be administered at the age of fourteen, and the obligation to give military service in the defence of the country probably began at the same time. In the fifteenth century, the majority of cantons raised the age to sixteen; but it is certain that in 1291 and 1315 children of fourteen voted with their fathers and grandfathers and took their place by hundreds in the ranks of the founders of Swiss independence. It is estimated that during this period the Landsgemeinde of Schwyz and Uri counted a maximum attendance of 1,600 and 1,000 respectively. Obwalden and Nidwalden together would give a substantially higher figure.

Attendance at the principal Landsgemeinde, held in May, was compulsory for all citizens. This Landsgemeinde, which was invariably invested with a certain pomp, was often followed by a supple-

mentary meeting or *Nachgemeinde*, extraordinary assemblies without ceremonial in which the people disposed of matters which could not be settled in May or which arose since then. The circular form of meeting (German: *Ring*) seems to have been chosen instinctively from the very earliest times. The chief magistrate of the locality, the Landammann, took his seat on a platform in the centre. The Landsgemeinde always opened with a religious ceremony and an address by the Landammann.

Originally, the fidelity of the people to their chief, the Landammann, was remarkable. Chosen from the most respected families of the country, the Landammann carries the mind back to the dynasties of shepherd-kings. Harmony between the people and their chiefs, concentration of all power in the hands of the assembled people, custom taking the place of laws, great simplicity in political procedure and machinery—such are the essential features of the Landsgemeinden of heroic times.

Decay came with the abandonment of the modest, straightforward and noble policy of those times. The military successes of the Confederate States led to treaties with foreign powers, 'capitulations' by which they undertook to supply mercenary troops. From that time foreign ambassadors sought to bribe influential chiefs with gold; votes were bought; corruption spread throughout public life. The Confederates prided themselves on the

price which was given for the co-operation of their troops. They surrounded the May Landsgemeinde with a new pomp. The ceremonial was fixed. For the opening of the Landsgemeinde, a platoon of troops was called out. The principal magistrate and the members of the Council formed a procession which, headed by minor dignitaries, in full uniform, proceeded majestically towards the appointed spot. The Landammann opened the Landsgemeinde with an address, not very different from a speech from the throne, in which he reviewed European happenings.

As there were no rules of procedure in the Landsgemeinde, laws were passed against those who attempted to create a disturbance. The first law against interrupters was placed on record in 1525 at Appenzell. It condemned them to a fine of one livre and ejection from the Ring. Shortly afterwards rules of a similar character became general. At Schwyz, the interrupter was required to ask pardon from God and the magistrates. At Stans, he was obliged to kneel down in the middle of the Ring and repeat and Paternoster and Ave Maria five times. But the most serious difficulties arose over the control of discussion. Upon this point the necessity for rules was felt soonest and the greatest trouble experienced in framing any. The constant preoccupation of the magistrates, and especially of the Landammann who had the responsibility of presiding, was to provide against

confused, discussions, perplexing, intricacy and thoughtless decisions; that of the people was to maintain its liberty intact. The one sought to limit the right of individual initiative of the members of the Landsgemeinde; they desired that every proposal should be first submitted to the Council a certain number of days or weeks beforehand. The other insisted upon the right of every one to present at any time whatever proposals he thought fit. In some Landsgemeinden the authoritarian principle was established without a struggle. This was the case at Appenzell-Ausserrhoden, where every proposal by an individual must without exception be submitted to the Council. In other cases, at Stans for example, the people defended their freedom of initiative with desperation.

In 1738, a citizen of Appenzell so far forgot himself as to bring forward without warning in the Landsgemeinde an individual motion upon a question of finance. He was immediately stripped of his sword and placed in the pillory with a bit in his mouth and a board above his head bearing the word 'Rebel.' At Stans, on the other hand, the conflict between the Landsgemeinde and the Council upon this point continued until 1700, in which year it was solemnly decided to allow every one to propose 'anything that be not contrary to the glory of God or to the honour and advantage of the fatherland,' a formula which was suppressed in the following year because the magistrates

seemed to take advantage of it to restrict individual liberty.

In some cantons, the Landammann used to be re-elected from year to year, the people remaining faithful to the same chief magistrate for twenty or thirty years (a similar occurrence might still be found to-day), while Nidwalden had a law by which anyone who proposed the re-election of the retiring Landammann was declared forsworn, and condemned to pay a fine of one thousand florins. This provision made room for a curious combination by which four citizens were appointed Landammann for life and one of them chosen to take office each year. In most Landsgemeinden, the huissier, whose function was originally that of judge, acted as provisional president of the assembly.

The power of the Landsgemeinden increased considerably when they succeeded in depriving the Landammann of the exclusive right of convocation. Thereafter they considered themselves absolutely sovereign in law and in fact. They no longer recognized any sphere in which the State was debarred from action. 'The Landsgemeinde,' ran a declaration carried at Stans on the 10th July 1712, 'must be sovereign in the land. It makes and unmakes without conditions, and if anyone denies that the Landsgemeinde is the first and sovereign authority in the country, let him be outlawed and a price of 100 ducats placed upon his head.' 'A

far cry, indeed, from the modest terms of the pact of 1291!

The completeness of the confusion of powers would make Montesquieu and his school shudder. The Landsgemeinden do not confine themselves to promulgating laws, declaring war, concluding peace, authorizing recruiting, deciding all matters touching subject lands, coining money, having roads constructed, granting or refusing naturalization, passing accounts, and exercising in short all the privileges of the superior legislative authority. In addition, they practise the right of interpellation; they act as judge in great political trials; they even bring within their jurisdiction certain civil cases; they sentence to a fine, to imprisonment and to death; they enjoy the prerogative of pardon; they tax food and wine, fix maximum prices, just like the Federal Council of 1918; in a word, they do whatever it pleases them to do, up to the point at which a certain separation, at any rate in judicial matters, is introduced. It is realized that judgements should be pronounced by a special body, and criminal cases pass from the Landsgemeinde to the Council or to an *ad hoc* tribunal. It was left till the present century to push separation still farther, and to establish in the cantons possessing a Landsgemeinde a distribution of powers which is not widely different from that prevailing in other cantons.

The military 'capitulations' and the corruption

in which they resulted caused iniquitous judgements to be pronounced by the Landsgemeinden, during the period when faction, the venality of voters, and the lavish distribution of wine, promises and money in the taverns produced the most deplorable effects.

The old Confederation of the Thirteen Cantons, which came to an end in 1798, included eleven Landsgemeinden, those of Appenzell-Ausserrhoden, Appenzell-Innerrhoden, Gersau, Catholic Glarus, Protestant Glarus, Nidwalden, Obwalden, Schwyz, Uri, Urseren and Zug. In Switzerland to-day there are only six. Gersau and Urseren were rather assemblies of communes than Landsgemeinden proper. The two Landsgemeinden of Glarus coalesced in 1836. The Landsgemeinde of Schwyz disappeared, the victim of its own excesses, after disorder and party strife of an extreme violence lasting from 1830 to 1847. Upon the dissolution of the Sonderbund, Schwyz had perforce to capitulate and allow the Liberal opposition to gain power and vote a new Constitution in which it was agreed to dispense with the cantonal Landsgemeinde in any shape or form.

Such then, in broadest outline, was the history of the Landsgemeinden from the heroic period until their decay. Abolished in 1798, when a Republic one and indivisible was imposed upon Switzerland, they were re-established in 1803 by the Act of Mediation granted to Switzerland by Bonaparte.

When the partisans of the representative system raised objections on the score of the disorder attending the discussions of the Landsgemeinden, the First Consul remarked that it was easy to remedy that by binding each Landsgemeinde to deal with nothing outside the official agenda. This principle was adopted everywhere, notably at Stans, where the authorities had for so long sought to establish it, and at Glarus, where every citizen still had the right to propose whatever he thought fit as soon as the official business was disposed of.

With the downfall of Napoleon, the democratic cantons were again master in their own house and the Landsgemeinden reacted to the change. Nevertheless, they reverted to their old practices only in part. The old-fashioned ceremonial was cut down. At Glarus there were abolished, one after the other, the wearing of swords, the three-cornered hat, the cloak of officials, and the custom by which all the bands and fifers of the canton marched at the head of the procession.

The profoundest change occurred after 1848, when all the cantons were obliged to bring their institutions into harmony with the principles of the federal Constitution and have them approved by the Chambers. Before 1798, the cantons which possessed a Landsgemeinde had no systematic constitution, but simply a Landbuch, a collection of laws and decrees which was revised from time to time.

Uri and Nidwalden remained faithful to the system of unwritten Constitutions until 1850. To-day the Landsgemeinden no longer enjoy unlimited sovereignty. The citizens are subject to a law imposed by themselves, and obtaining sanction from a federal authority, from which redress may be obtained in the event of their violating it. Both in law and in fact, the old democracies have ceased, very much to their own advantage, to be absolute governments. Hence followed a whole series of changes in law and practice. The age of qualification for voting in the Landsgemeinde was raised from 14 or 16 years to 18 or 20. Nidwalden had to give up its four Landammänner appointed for life and be satisfied with two, appointed for six years and holding office alternately. The 'tribunal of blood,' composed of all citizens over 30 years of age, gave way to a criminal court consisting of the ordinary court of law and the Council. The powers of the Landsgemeinde are formally defined. It is now only the superior elective and legislative authority—a position of no mean importance. Appointment by lot and the exercise of political functions passed away, while bribery and corrupt practices came to an end simultaneously with the military capitulations and the suppression of subject territories.

'In Rambert's study of the Landsgemeinde will be found a multitude of other curious details. The following account will perhaps be of interest to

my readers. He is speaking of a Landsgemeinde of Appenzell-Ausserrhoden held at Trogen:

'This Landsgemeinde is by far the biggest. It numbers up to ten or eleven thousand members. Anyone who without valid excuse fails to attend is liable to a fine. . . . There are processions along all the main roads. Everyone is in his Sunday clothes, black hat, black coat, black breeches—literally everyone, even the peasants and the very poorest. In olden days they used to carry real swords; some, a mere handful, do so still. Most have just a military sabre or a hunting knife. It is the badge of full citizenship. . . .

'At the moment when the Landammann emerges from the town-hall, the Landsgemeinde uncovers, and where were 10,000 hats appear 10,000 human skulls, a sea of heads. . . . The coldest and most phlegmatic of men are moved like the rest. One fears to breathe. This is a people, not a tribal concourse as at Stans or Sarnen; it is a true people, showing its respect with single-minded sincerity.

'When votes are taken, the people respond with wonderful unity. Whether they vote for or against, by the thousand or by the ten thousand, they raise their hands as one man, throwing them into the air palms open with an incredible quickness. The strength of the parties is judged by the effect of whiteness produced by the simultaneous lifting of all these hands. . . . If there is any doubt, the

test is repeated. The Landammann summons to the platform citizens from both parties, and forms a commission of experts from whose decision there is no appeal. . . .

". . . At the close comes the taking of the oath. This is the supreme moment. The ceremony is utterly overwhelming in its solemnity. The oath is that of antiquity, all-compelling in its power. The formula is read to the Landammann who, with raised hand, replies in these terms: "I have fully understood what has been read to me. I am resolved to keep it, truly and at all times, faithfully and without fraud, as truly as I wish and pray that God may sustain me." When the Landammann has sworn, he confronts the people and administers the oath to them in their turn. They must promise loyalty one to another. The pledges are interdependent. Out of 10,000 citizens there is not one who does not raise his hand, not one who does not repeat the formula, sentence by sentence, as it is read, slowly pronouncing every word. The great sound which rises from this motionless assembled multitude is perhaps the most awe-inspiring that is given to man to hear upon the earth. No sound of nature, neither wind nor waves, no musical sound, not even the great organ reverberating through the cathedral, reaches the same intensity of religious awe. The world of appearances has gone: there remains only the true world, that of human consciousness face to face with itself. The

ceremony concluded, the Landammann wishes everyone a safe journey home, and terminates the meeting.'

Opening the Landsgemeinde of Glarús in May 1866, the Landammann Heer, who was later a member of the Federal Council, expressed himself in these terms:

'Under the Landsgemeinde as we have it, this day in each year when the citizens are called upon to exercise their most sacred rights and discharge their most sacred duties, is, indeed, a day of toil, and of toil by no means easy of accomplishment; but at the same time it is the supreme festival of our people. With high-minded feelings of joy and pride, our country-folk gather here from the mountains and the plains to take counsel together for the prosperity of the country. Each one of them feels that this is the people's day of honour, the day when the opinion and judgement of the least citizen and of the richest or most powerful are of the same worth, the day when equality—equality of rights for all—becomes the completest and clearest of truths.

'Nowadays, in the cantons as in the Confederation, there is much talk of extending the rights of the people, and the desire is easy to understand; but what is intended by this phrase is but a feeble shadow of what we in our Landsgemeinden have possessed for centuries. Here public officials and the people, representatives of the most conflicting

opinions and interests, meet together with goodwill side by side; each has the right to express his view but must allow others to rebut it, and in the last resort, after hearing both sides, the whole people decides. This is the peculiar advantage of general assemblies, for which there is not even an approximate compensation when the people is called upon to make its decisions by splitting up into numerous small assemblies, each one of which is exposed to special, and often exclusive, influences.

'. . . Let us not be led into error by the love we bear towards our free institutions, our Landsgemeinden; but let us rather make it our ambition to prove to the world, or at least to our fellow-citizens, that the spirit of our times, the spirit of true progress and true humanity, may find acceptance also in this form of institution.'

This eulogy of the Landsgemeinde is justified, but, even in its present form, it has its weaknesses and disadvantages, like every political institution. Obviously it cannot succeed except in small areas, and there only provided a certain unity is attained. Regional and political differences pushed to the extreme formed the rock upon which that of Schwyz came to grief. Its success depends in a very great measure upon the political skill and high character of those who direct it. They must know how to manipulate these extremely susceptible assemblies, how to deal with would-be demagogues and how to steer them into the right path without

their suspecting it. If it is more or less true that this amounts to government by a few men forming a kind of aristocracy, the same might be said of almost all political systems. Necessarily, the collective will is in the last analysis the resultant of a number of individual wills which it influences or determines more or less strongly. The Landsgemeinden are reproached for a tendency towards political and religious intolerance, and for going out of their way to obstruct the path of progress. But here a distinction must be made. The Landsgemeinden of Catholic cantons, the mountainous or agricultural regions, are generally inspired by a spirit of conservatism and loyalty to tradition, which has frequently given justification for this criticism. The case is different with the Landsgemeinden of the Protestant and industrial cantons, Glarus and Appenzell-Ausserrhoden. These cantons have contrived to follow a progressive policy and work out satisfactory solutions of the complicated problems presented by modern life in industrial districts, and have demonstrated that the institution of the Landsgemeinde is entirely compatible with the requirements of the age.

To complete this historical sketch, it may be useful to make a brief survey of the constitutions now in force in those cantons which possess a Landsgemeinde. The majority of these were revised towards the end of the last century.

The Constitution of Uri, which dates from 1888,

is preceded by this preamble: 'In the name of Almighty God, the people of the canton of Uri establishes the following cantonal Constitution in virtue of the right of free determination inherited from its ancestors through a space of more than five centuries.'

The first article states that the canton of Uri is a sovereign canton, within the limits fixed by the Federal Constitution, and that its institutions are democratic. Sovereignty resides in the people, which passes its own laws and Constitution and elects its own magistrates.

The section dealing with the rights and duties of citizenship lays down that participation in the Landsgemeinde and in the assemblies of the communes is a civic duty. Voting is by show of hands, but the communes have the power to introduce the secret ballot. The acceptance of offices conferred by the Landrat (Great Council) and by the assemblies of communes and corporations is compulsory for two legal terms.

Any enfranchised citizen or group of citizens has the right to submit proposals to the Landsgemeinde. In the case of amendments to the Constitution, fifty signatures are required. All ordinances and all resolutions of a general scope passed by the Landrat must be submitted to the Landsgemeinde if demanded by not less than twenty citizens. In principle, public functions are unpaid.

Article 6, which defines the powers of authori-

ties, asserts that the Landsgemeinde is the sovereign legislative authority of the canton. Its ordinary meeting is on the first Sunday in May, but special meetings are held whenever either it or the Landrat decides, or when demanded by 150 citizens. The Landammann presides. The Landrat draws up the list of subjects for discussion, as well as the time and place of special meetings. Justice and the public weal, and not despotism or the power of the strongest, must prevail in the Landsgemeinde, declares section 50. And Article 51 adds that if anyone considers his private rights infringed by a decision of the Landsgemeinde, he may have recourse to the ordinary courts, which are to hear the evidence and decide conscientiously between the people and the plaintiff. But he is required to have his objection entered upon the records of the Landsgemeinde and to take proceedings within a month.

Article 52 enumerates the powers of the Landsgemeinde as follows: (*a*) the total or partial revision of the Constitution; (*b*) the right to make all laws and to decide upon proposals brought forward by means of the popular initiative; (*c*) the voting of taxes and loans; (*d*) the renunciation of important cantonal rights and the concession of privileges; (*e*) the granting of citizenship; (*f*) the creation of new offices at a fixed salary, and the fixing of the remuneration of the officials and servants whom it elects; (*g*) the election of

the members of the government (Regierungsrat), which is partially renewed every other year; that of the Landammann and his deputies for a term of one year; that of members of the Council of States, of members and deputies of the higher Court, the criminal court and the local courts subject to partial renewal every other year, of the attorney-general and the huissiers.

The Constitution of Obwalden confers practically the same powers upon the Landsgemeinde, but it states them more precisely. It provides in Article 26 that the Landsgemeinde may delegate to the Great Council (Kantonsrat) the right of enacting laws. As it is highly important in the delimitation of the respective powers of the Landsgemeinde and the Great Council to determine the significance of the word 'law,' it gives this definition: any legislative proposal affecting in any general and lasting manner administration, justice or the rights and duties of individuals, public corporations, communes or the State. In Article 26 it recognizes the right of any elector to present to the Landammann before the 1st January in each year proposals for the enactment, amendment or repeal of ordinances, provided that they are within the competence of the Landsgemeinde and do not infringe federal law. These proposals are transmitted to the Landsgemeinde, exception being made, however, of ordinances relating to State undertakings of an economic character, which have to

be conducted upon a commercial basis. If these proposals involve no breach of the Federal and Cantonal Constitutions or of private rights, and are not directed against injunctions or judgements delivered by other authorities within the limits of their competence, they must be submitted to the next meeting of the Landsgemeinde, together with the opinion of the Great Council. If the latter recommends rejection, the originator of the proposal has the right to withdraw it. If it approves, he is required to support it in person in the Landsgemeinde. Should he not put in an appearance, his absence is equivalent to a withdrawal of the proposal. When the time comes to decide, the Landsgemeinde can only vote upon the specific proposal or upon a counter-proposal submitted by the Great Council.

I give the article almost in its entirety in order to show the distance between this minute limitation of the right of initiative in the Landsgemeinde and the wellnigh complete liberty of former days.

The Great Council at Obwalden drafts and moves resolutions submitted to the Landsgemeinde by it or the local governing body. A certain number of nominations are allotted to it. It appoints, for example, the members of the higher court, the education committee, the health committee and a host of administrative officials.

The same Constitution contains highly detailed provisions for the total or partial revision of the

Constitution, which can be requisitioned by 500 electors and submitted to the Landsgemeinde. Nevertheless, upon the demand of the Great Council or of 1,200 electors, questions relating to the revision and the proposal itself must be voted upon in the communes by secret ballot.

The counting of votes has always been a delicate operation in cases when the issue is close. Article 22 of the Constitution of Nidwalden prescribes that voting is by show of hands, and the result is declared by the cantonal huissier with the help of two other huissiers nominated by the government. In cases of especial importance, the government is empowered to nominate two additional tellers from the Landrat. If, after two trials, the tellers are still in doubt which side hac the majority, they proceed to count the voters—a comparatively easy process in the Landsgemeinde of Nidwalden, which is one of the smallest.

In Nidwalden, non-cantonal affairs are dealt with by assemblies composed of the electors of the commune, and forming, according to their function, communes for the election of the Landrat, ecclesiastical communes (parishes), educational communes and poor-relief communes. Each parish forms an ecclesiastical commune, which transacts its business in a general assembly of all the adherents of the same faith—nearly the whole population of Nidwalden is Roman Catholic—or through parish councils as intermediaries. The general assembly passes the

accounts of the parish, fixes the 'church rate,' and carries out the election of incumbents, in accordance with its traditional rights, and the election of the parish council. This demi-canton is divided into eleven districts, each of which possesses a communal assembly and a council elected by the assembly (parish or municipal council).

The Landsgemeinde of Glarus is both one of the most numerous and one of those in which discussion as well as voting takes place. The initiative of the individual is elaborately regulated. Every citizen is entitled to send proposals for what is called the 'Memorial.' Subjects which are not included in the 'Memorial' cannot be debated in the Landsgemeinde. Every year, in the middle of December at latest, the government publishes in the official gazette a notice inviting electors or authorities who wish to bring proposals before the Landsgemeinde to send them before the end of the month, in writing, signed by the author and accompanied by a reasoned statement in support. These proposals are transmitted to the Great Council or Landrat. Those which contain nothing contrary to the Cantonal or Federal Constitution, and which are supported by at least ten of the members present, are submitted to the Landsgemeinde with the opinion of the Landrat and, should occasion arise, of the government or a competent committee. All proposals which do not gain in the Landrat the ten votes required before that

body considers them are included in the 'Memorial' under a special heading, but without any message from the government. The Landsgemeinde only deals with these forlorn hopes if a special resolution to that effect is carried, and even then its decision merely rests between rejecting them or asking the Landrat to report upon them the following year. In this way, waste of time is avoided with idle proposals in an assembly in which discussion only admits of short speeches, always to the point, with no digressions or rhetorical flourishes.

The provisions concerning education and the church are also not without interest. In the canton of Glarus, the educational communes are empowered to levy a capitation-tax and a property-tax to meet their expenditure. The demi-canton of Appenzell-Ausserrhoden regulates church affairs as follows: real estate applied to religious purposes is the property of the commune, while all other ecclesiastical property belongs to the parish, which is guaranteed the right of use over glebe lands.

Participation in the Landsgemeinde of Appenzell-Ausserrhoden is declared a civic duty up to the age of sixty years. Anyone failing to attend the Landsgemeinde without valid excuse is punished by a fine of ten francs. Among the powers of the Landsgemeinde are the right of passing or rejecting laws, the right of decision upon the expenditure of amounts exceeding 30,000 francs in one sum or 10,000 francs annually, and the election

of the seven members of the government, of the Landammann; of the eleven members of the supreme court and of the cantonal huissier. 'The list of subjects to be discussed in the Landsgemeinde is drawn up by the Great Council (Kantonsrat). It comprises proposals made by the Council and accompanied by a message, and those initiated by private individuals with the arguments advanced by them in support.' It is published four weeks before the Landsgemeinde. The latter votes, but does not discuss. Legislative proposals are drafted by the Great Council, unless the Landsgemeinde decides to entrust the matter to a special body.

The cantons in which pure democracy prevails have, like the others, embodied in their constitutions the same personal rights as are guaranteed by the Federal Constitution, freedom of thought, of worship, etc. The only one which makes any formal reservations is that of Appenzell-Innerrhoden. In its third article it states that the Catholic religion enjoys, as the religion of the people, the protection and guarantee of the State, and that 'toleration' for other faiths is recognized, together with freedom of worship for their members within the limits of morality. The word 'toleration' instead of 'right' is not in harmony with the spirit of the Federal Constitution, and savours a little of the times when Catholic Landsgemeinden practised a policy of absolute exclusion towards other religions.

To complete this sketch of the organization of the political life of the cantons which still practise pure democracy, I shall here summarize briefly the proceedings of the Landsgemeinden held in April and May 1919, in order to show clearly how this characteristic institution works in practice.

The canton of Uri recently passed through difficult times. In spite of all the precautions taken in its Constitution and laws to prevent superfluous expenditure, it became involved in a financial crisis which brought it within an ace of ruin, and from which it was only rescued by the aid of the Confederation. I hasten to say that the fault does not rest with the Landsgemeinde. Just as other cantons have their State Bank, which generally renders good service and swells the revenues of the canton, Uri has a cantonal Savings Bank, for which it had undertaken unlimited responsibility. Thanks to the carelessness and imprudence of its directors and officials, thanks also to the blind confidence of certain members of the government and their imperviousness to the warnings of the opposition, this Bank had embarked upon risky operations out of all proportion to the resources of a canton of 20,000 inhabitants, and far removed from the sphere of its normal activities—industrial enterprises, hotels, railways, etc. When the crisis caused by the world war arose, the Bank found itself unable to meet its obligations, and the canton, one of the glorious cradles of Swiss independence,

would have become bankrupt if the Confederation had not granted it a loan of five million francs. The Landsgemeinde of 1918 had the satisfaction of recording an improvement in the financial situation. Thanks to the sale of a factory acquired by the Savings Bank, one million was repaid to the Confederation, and the debt reduced to 4,045,000 francs, an enormous sum indeed for the canton, which is compelled in consequence to tax itself heavily. The Landsgemeinde re-elected as Landammann the leader of the Radical-Liberal opposition, which came into power after the crash it had predicted.

The Landsgemeinde of Nidwalden, held at Wil, close to Stans, experienced one of those gusts of independence which occasionally upset the plans of party leaders. The opening speech was lengthy, runs the report from which these details are taken. The Landammann praised the Pope, praised the Federal Council, praised the Nidwalden troops discharging their patriotic duty on the frontier, paid a tribute to the memory of a recently deceased magistrate and expressed to the cantonal huissier the congratulations and thanks of the people of Nidwalden on the occasion of the fiftieth anniversary of his appointment. Passing from praise to blame, the Landammann protested against the abusive reproaches and ceaseless criticisms levelled at authority during such difficult times—'criticisms which to-day appear to have become one of the

conditions of existence for every good citizen.' This rating seems to have made an unfavourable impression on the Landsgemeinde. When the time came to choose a member of the government, the official candidate, whose election was considered certain and who was even supported by one of the opposition leaders, was rejected in favour of an independent agriculturalist proposed by a private soldier in uniform. Although this citizen vigorously declined to stand, he was elected by a two-thirds majority. The budget was passed without dissent, but when a popularly initiated proposal relating to the letting out of fishing rights was reached, the government, which opposed it, was beaten ignominiously. The Landsgemeinde dispersed with the pleasant feeling of having asserted itself, but the government was most unhappy.

The Landsgemeinde of the other half of Unterwalden, that of Obwalden, was still more exciting. It took place at Sarnen, and attracted over 1,500 citizens. A lively opposition was raised to a proposal for additional taxation. Demands were made for a financial statement on more modern principles, and the government was reproached for taking no steps to turn the hydraulic resources of the district to profit. The first vote was indecisive. The huissiers announced an equality of votes for acceptance and rejection, but on a second trial four huissiers believed there was a small majority for

the proposal, while three others declared it rejected. Whereupon the president proclaimed the law adopted amid fierce protests by the opposition, which demanded a count of votes one by one. Now the law permits this method of verification only after two successive votes have been declared inconclusive. Which of the huissiers had estimated correctly? It is impossible to say, but the dissatisfaction of the opposition was so keen that a meeting of protest was held a few days later at Alpnack, and demanded almost unanimously the abolition of the ancient institution, the Landsgemeinde. A committee of fifteen members was elected to initiate the measure. On the 23rd February 1919, the electors of Obwalden voted by secret ballot upon the proposal initiated. The Landsgemeinde was retained, but only by a majority of 76 votes. Apparently it would suffice to improve the methods of counting votes and to declare that enumeration shall be of right whenever the ocular estimates of the huissiers are in disagreement.

The Landsgemeinde of Appenzell-Ausserrhoden at Trogen, numbered at least 11,000. Some years ago it was afflicted with a passion for negation which made it the despair of the governing authorities. A schoolboy, whose master had given him an essay on this institution, offered as the best description: 'The Landsgemeinde elects the cantonal huissier and rejects laws.' But, in 1918, the

Landsgemeinde displayed an attitude of obsequiousness to all the wishes of the government. After electing the members of the government and confirming the appointment of the member of the Council of States and the eleven members of the superior court, it accepted all the proposals put before it, including a law providing that during the next thirteen years the surplus realized by the cantonal insurance department should be set aside for a scheme of insurance against old age and disablement, a law increasing the State contribution for the payment of teachers, and an extraordinary 'war' tax of two francs per thousand upon fortunes exceeding 15,000 francs or earned incomes exceeding 3,000 francs.

At Appenzell, the small Landsgemeinde of Innerrhoden was much less gracious towards its government, two members of which were not re-elected—an extremely rare occurrence. They had been in charge of the cantonal food control administration, a department set up during the war, whose activities brought anything but popularity to its directors.

The Landsgemeinde of Glarus met on the 5th May. For many years it has had as president a very influential magistrate, a wealthy and eloquent manufacturer. It adopted numerous proposals, one of which allocated to the workmen's unemployment insurance department the portion of the federal 'war' tax repayable to the canton. An

amendment to the law of inheritance steepened the incidence of the succession duty. The price of salt was raised from 15 to 20 centimes a kilogramme. War bonuses on account of the increased cost of living were granted to officials and employees. An amendment to the law dealing with the insurance of real estate and a proposal for the utilization of the resources of water-power also obtained the approval of the sovereign body. So, too, did a law upon cattle-breeding, and another for the establishment of a winter school of agriculture, etc. And the Landsgemeinde of Glarus is one of those in which discussion is allowed! Evidently the institution still works quite efficiently, especially—as I have already stated—when it is guided by a skilful and influential president.

I may add that three years ago the canton of Glarus had 8,901 electors, Uri 4,849, Obwalden 4,163, Nidwalden 3,106, Ausserrhoden 2,729, Innerrhoden 13,634. The number of citizens present at the Landsgemeinde never reaches these figures, although at times it approaches them very closely.

IV

THE REFERENDUM

'ADIEU, cursed country of the referendum,' the Marquis de Puisieux, French ambassador to the Thirteen Cantons, is said to have exclaimed as he left Switzerland in 1708. A year later his successor, the Comte du Luc, wrote to M. de Chamillard, Louis XIV's minister: 'The members of the Diet dispersed after interminable discussions. In this country they call it Referendum. I have never seen a nation so incapable of knowing its own mind. It needs more than the patience of a Capuchin to follow them, and I am afraid my Provençal temperament was not made for negotiations with such people. . . .' It was to the referendum also that the First Consul referred in 1803, when he pointed out to the Swiss representatives as one of the advantages of federalism the facilities which the members of the Diet enjoyed for putting off foreign powers and gaining time when confronted with their demands by referring them to their respective cantons. This was the referendum employed by the Diet of the twenty-two cantons before 1848, when the mem-

bers made decisions 'ad referendum,' subject to reference to their canton, for ratification. The referendum of contemporary Switzerland is rather different. In a sense it is connected with the expression 'referre ad populum' which the Romans employed when they consulted the people assembled in its comitiæ upon laws proposed by the Consul, the Prætor or the Tribune. The present Swiss referendum consists in the submission to the people for approval or rejection of a law or decision voted by the legislative bodies. We have already seen it at work in the sixteenth century in certain Swiss cantons, and again when the Constitution of 1802 was submitted to the people. Its importance has become so great as to warrant consideration at some length.

The introduction of the referendum in Switzerland constitutes one of the chief victories of the principle of direct government by the people over that of representative government. No one has defended direct government with more power and conviction than Victor Considérant, the advanced republican of 1848 who was one of the precursors of legislation by the people. 'When a people,' he wrote, 'has once assumed the exercise of its legislative will, no section, old or young, rotten or sound, will be able to contemplate encroachment upon it. Divisions will be blotted out and parties united one with another.

'So long, however, as the people, like an inert

mass, is moved by a governmental machine external to itself, which each party can use to impose its will upon the nation, so long will furious party strife, intrigues, coups d'Etat and revolutions remain the order of the day. . . .

'. . . One conceives governments contending with one another for a government external to the nation; one does not conceive them contending in a nation which rules itself.

'When the political pyramid rests on the nation, it is seated squarely on its base, and no longer artificially balanced on its apex. Stability is assured.

'The different types of Socialism, that is the different proposals for the solution of the social question, are thus necessarily reduced to the form they must take, the form of ideas developing freely within the nation and operating through and upon the collective opinion. Being no longer political parties competing for the reins of power, they become schools competing for the free conquest of intellects.

'The effective realization of the sovereignty of the people constitutes the final solution of the democratic problem and opens the best way for the solution of the social problem.

'Hitherto, democracy has been sentient, but not yet conscious.'

In 1850 a German publicist, Rittinghausen, contributed to *La Démocratie pacifique* articles

upon 'direct legislation by the people or true democracy,' in which the same ideas were developed.

Neither Considérant nor Rittinghausen was a prophet in his own country.

In Switzerland the referendum has scored a definitive success, but in other countries, notably in France, objections which in appearance are very serious are still raised against this democratic institution. In his *Eléments de droit constitutionnel français*, a professor whose word carries weight, M. Esmein, writes that the referendum labours under most serious disadvantages both in theory and in practice. It is vicious in theory, he says, in that the great majority of citizens is incapable of forming a sound opinion upon the laws or bills submitted to them, owing to their lack of education for understanding them and of leisure for studying them. Either the majority will vote blindly for a proposal which it does not understand, or a proposal, perhaps excellent in itself, will be rejected on account of some possibly secondary provision, which may have provoked one of those popular prejudices which are so easy to arouse and so difficult to destroy. In practice the system is equally vicious. It diverts all serious discussion into a multitude of assemblies which have to give the final decision upon a bill, and the Press is altogether inadequate for instructing the people upon such issues. The system,

again, is defective in that an entire bill is submitted to the people as a single whole which it must either accept in spite of any provision of which it disapproves or reject on account of such provision. Direct government results in the obstruction of rational reforms and general legislative stagnation. If, in Switzerland, it has not caused very much harm, it has prevented much good from being done. It discredits representative government without suppressing it, and weakens the prestige, the power for good and the feeling of responsibility in the elected assemblies. M. Esmein recognizes, however, that the idea of the referendum is gaining ground and that the expression of the will of the people by the certain and incontestable method of the popular vote may be considered by many citizens as the only safe barrier against the rising flood of Socialist pretensions.

M. Esmein's objections are not wholly unfounded, but some of them, as we shall see later, are not substantiated by an examination of the results of the referendum, and the advantages derived from the adoption of this democratic institution far outweigh the disadvantages. As M. Numa Droz, a former President of the Swiss Confederation, aptly said in a monograph on the referendum, the objections raised against this method of consulting the people merely prove that perfection is not of this world. A people which is conscious of its own

worth, and has the habit of freedom, wrote M. Droz, must desire to determine its own destiny more and more completely. Its representatives must resign themselves to the position of mere councillors. Democracy tends increasingly to entrust the power of legislation to the whole of the people and to leave to parliaments no more than the preparation of laws. The people makes mistakes much less often than is generally supposed. Many laws or decrees in Switzerland have been rejected because the members of the Chambers had not taken sufficient trouble to enlighten the people, and more than one negative verdict, deplored at the moment when pronounced, has turned out eventually to be a fortunate occurrence. In the long run, all parliamentary majorities end in a greater or less measure of disagreement with the people (which confirms Rousseau's theory). The referendum sets a limit to the tension thus produced by clearing the political atmosphere of this electrical disturbance.

There is no better safeguard against revolution than the referendum. Revolutions have ceased in Switzerland since this democratic institution has come into general use. While a minority can often pretend that the decision of a parliamentary majority does not express the will of the people, the verdict of the referendum is definitive, at least for a time. If rejected, proposals may be redrafted by parliament, adapted to circumstances

and brought into closer agreement with the public opinion of the moment. Premature legislation is thus avoided, together with the resistance which its enforcement would arouse. Far from diminishing the importance of parliamentary labours, the referendum obliges members to prepare laws and decrees with the greatest possible care, and by imposing upon them the duty of justifying their work to the people, it helps to make them public men in the widest sense of the term; it adds to, rather than detracts from, the importance of their function.

If the referendum hinders the over-luxurious growth of legislation, it is not altogether an evil. Hérault de Seychelles pointed this out when speaking in the National Convention of this mania for legislation which brings the law into disrepute, and said that it was better to wait and pass one good law than to take the risk of a multiplicity of bad ones. Finally, the referendum contributes to the education of the people, not by enabling it to understand all the details of a law, but by compelling it to take an interest in it and to seek to grasp its import.

The machinery of the referendum in Switzerland is not complicated, but differs according as the referendum is compulsory or optional. In the case of the compulsory referendum, a vote of the people is required by law. Once or twice a year, sometimes more, the people are called upon to vote

by secret ballot in their communes upon the proposals adopted in the interval by the Great Council or by the Cantonal Council. With the optional referendum, certain preliminary formalities are necessary. Within a period of from one to twelve months, citizens who desire the rejection of a law must collect the number of signatures required by law, which varies in the different cantons. For laws and decrees, the federal legislature has fixed the number at 30,000, a figure which is easily mastered. There is no political party of any importance in Switzerland which cannot reach it. Moreover, referendum committees usually adopt the tactics of asserting that it is a question not of offering decided opposition to a proposal, but simply of obtaining an opportunity for the people to be consulted and a thorough examination of the proposal to be made. In this way they obtain the signatures of a certain number of electors who have formed no fixed opinion upon the matter in question. This declaration, however, is hardly sincere. In fact, from the moment a committee is formed to demand a referendum upon a law, it may be taken for granted that it will oppose it tooth and nail when the time for the people to vote draws near. When the legal number of signatures has been collected and these signatures, which must be legalized by the communal authority, have been verified, the federal or cantonal authority fixes the date of the

vote, generally with a sufficient interval to allow the supporters and opponents of the contested proposal to place their arguments before the people.

Mention is often made of the financial referendum, which applies to proposals for taxation, loans, heavy extraordinary expenditure, etc. But this referendum is only a variety of the two others. It is compulsory or optional according to the cantons.

The Confederation possesses neither the compulsory referendum (except upon amendments to the Constitution) nor the financial referendum, and even its optional referendum is subject to rather important restrictions. Article 89 of the Federal Constitution lays down that 'federal laws are submitted to the people for adoption or rejection if a demand to that effect is made by 30,000 electors or by eight cantons, and the same applies to federal decrees which are of a general application and not urgent in character.' Thus any federal law containing provisions of a general and permanent kind necessarily comes within the sphere of the optional referendum, while on the other hand decrees, which are usually of an administrative nature and more or less limited in point of time, can be submitted to a vote of the people solely if they are general in their scope (German: *allgemein verbindlich*) and not urgent. These two expressions are highly elastic, and the Federal Assembly has interpreted them more than

once in a sense of which the opposition disapproved. Thus, all military credits and all subsidies voted by the Chambers for river improvements, etc., escape the popular vote and the risks which would accompany it in a country where it is not always easy to harmonize the interests of different regions.

There can be no doubt that the compulsory referendum realizes the principle of direct legislation by the people better than the optional referendum. The compulsory referendum necessitates the constant co-operation of the people in the process of legislation. No law can come into operation unless the whole body of electors has sanctioned it. The optional referendum approximates rather to the ancient veto. The approval of the people is assumed each time it does not make use of this right. As the optional referendum involves some considerable effort and expenditure by those who set it in motion, it is not to be wondered at that in normal times it operates in comparatively few cases. Opposition to a proposal has to be strong for a referendum to be demanded. In the optional form, the vote of the people no longer takes the shape of a regular yearly consultation; often it is a manifestation of keen opposition, directed not merely against the proposal, but in some cases against the policy and tendencies of the Chambers and governments from which it emanates. It serves then as a safety-

valve by providing a means of summary judgement upon the general policy of parliament.

In the Confederation, the introduction of the compulsory referendum would run up against a special difficulty. It exists there upon constitutional revisions, both total and partial, but in such cases no new provision can come into operation unless it obtains a majority of the cantons as well as of the people. The federative principle is safeguarded in this way. The federal referendum upon laws requires only a majority of the electors taking part in the vote, and as, on the whole, little use is made of it, the disadvantages of this encroachment on federalism are not very great. The majority of laws and decrees take effect without its intervention after passing both Chambers, one representing the people and the other the cantons. The situation would be very different if it were compulsory for all laws to be submitted to the people. The elimination of one of the two elements which go to the formation of a federative State would be a tender point. On the other hand, it would be dangerous to require for every law and decree a majority of the people and of the cantons. There would be a risk of frequent conflicts between the two majorities, and the crisis would probably be ended only with the defeat of cantonal sovereignty. There are reasons, then, for the belief that the federal referendum will retain its optional character for some time to come.

In the cantons, the compulsory referendum is the rule. In fact, it is in operation in the six cantons and demi-cantons which possess a Landsgemeinde and has penetrated into the cantons and demi-cantons of Aargau, Basel-Land, Bern, Grisons, Schaffhausen, Solothurn, Thurgau, Valais, and Zürich. The optional referendum prevails in Basel-Stadt, Geneva, Lucerne, Neuchâtel, St. Gall, Ticino, and Zug. Schwyz has the compulsory referendum only for laws and financial decrees. Vaud has the optional referendum and a limited financial referendum of a compulsory character. Fribourg is the only canton which still possesses neither form of legislative referendum. It will be seen from this enumeration that the compulsory referendum prevails in German Switzerland and the optional referendum in French and Italian Switzerland.

For constitutional changes, the referendum is compulsory in all cantons. Article 6 of the Federal Constitution requires as a condition of the ratification of the cantonal Constitutions by the Confederation that they shall be revised when an absolute majority of citizens demands it.

As I have already done in the case of the cantons where pure democracy prevails, I shall now give some of the provisions of the cantonal Constitutions, confining myself, however, to those which relate to the referendum. I shall begin with the compulsory referendum.

The Constitution of Zürich states in its first article that sovereignty resides in the people as a whole and is exercised directly by duly qualified electors and indirectly by authorities and officials. Article 18 adds that the people exercises its legislative functions in conjunction with the Cantonal Council. Twice a year, in spring and autumn, the people is required to vote upon the legislative acts of the Cantonal Council. In urgent cases, a supplementary vote may be taken. The following must be submitted to the vote of the people: all amendments to the Constitution; laws; agreements with other cantons; decrees of the Cantonal Council which the latter has no power to adopt finally; decisions which the Cantonal Council voluntarily lays before the people.

At the time of the submission of a proposal to the people, the Cantonal Council has the power to order a separate vote upon certain points of the proposal, which enables the people to reject any provision to which particular exception is taken while accepting the rest.

Voting in the referendum takes place by secret ballot in the communes. Participation in the vote is declared a civic duty. All proposals coming before the people must be announced and communicated to the electors at least thirty days before the ballot.

The Cantonal Council has the final passing of measures involving new expenditure not exceeding

250,000 francs in one sum or 20,000 francs a year. Proposals involving greater expenditure must be submitted to the people.

The arrangements of other cantons for the compulsory referendum differ little from those of Zürich. The amount of new or extraordinary expenditure beyond which the referendum applies varies usually with the population of the canton. Solothurn and Grisons have adopted the figure of 100,000 francs, while Bern and Vaud have raised the financial competence of the Great Council to 500,000 francs. One Constitution only allows laws proper to be dealt with by the compulsory legislative referendum; another applies it to a part of the decrees and orders of the administration. Here loans exceeding a certain amount are necessarily laid before the people. Elsewhere, it is a direct tax which has to be submitted to a popular vote when it rises above the rate fixed by the Constitution. This applies at Bern to any increase above twice the standard rate. Valais, the only French-speaking canton which has the compulsory legislative referendum, insists on a vote of the people upon any extraordinary expenditure exceeding 50,000 francs, when this expenditure cannot be met out of the ordinary receipts of the budget, and also upon any increase in the tax upon property. In Schaffhausen, the Great Council is empowered to consult the people in advance upon the introduction of certain principles into extra-

ordinary decrees. Each time there is a popular vote, electors receive at the same time as the proposals upon which they are to vote a message from the government instructing them upon the meaning and significance of the principal points contained in these proposals. One might instance, also, some variations in the length of time elapsing between discussion in the Great Councils and voting by the people.

The provisions for the optional referendum vary in regard to the number of signatures necessary to obtain the referendum and details concerning the collection and verification of signatures and the date of the voting. The Constitution of Lucerne prescribes a popular vote upon legislative proposals, agreements with other cantons, and financial decrees involving an extraordinary expenditure of 200,000 francs or a fresh annual expenditure of 20,000 francs or more, if within forty days from the publication of the law or decree, 4,000 citizens demand a referendum. The Great Council also has the power to order a popular vote on its own initiative. In the little canton of Zug, 500 signatures or one-third of the members of the Cantonal Council are sufficient, and the expenditure must be at least 40,000 francs in one sum of 5,000 francs annually. In Basel-Stadt, both laws and also final decrees of the Great Council which are not of a personal or urgent nature must be submitted to the body of citizens

if the demand is supported by 1,000 signatures or if the Great Council so decides. The interval within which a referendum may be sought is six weeks. In St. Gall, all laws as well as the decrees of the Great Council which are of general application and not urgent or which are not wholly within the competence of the Great Council, are to be voted upon by the people upon the demand either of 4,000 citizens within a period of thirty days or of one-third at least of the members of the Great Council. The latter may also consult the people as a preliminary to the embodiment of certain principles in a law. In Ticino, the opposition has to collect 5,000 signatures within an interval of one month. Urgency cannot be invoked in the case of any extraordinary expenditure of more than 200,000 francs.

In the canton of Neuchâtel, the number of signatures required is 3,000. Urgent decrees are not subject to the referendum, but the Great Council can only affirm urgency by a two-thirds majority. In Geneva, 2,500 signatures must be obtained within an interval of thirty days. The Constitution states expressly that the optional referendum cannot be applied to the budget as a whole, but only to particular proposals for the imposition of new taxes or the increase of existing taxes and to proposals involving the issue of bonds or any other form of loan. In the canton of Vaud, by Article 27 of the Constitution, every law

and decree passed by the Great Council must, without exception, be submitted to a referendum if demanded by 6,000 citizens. The referendum is compulsory for any law or decree involving an extraordinary expenditure of 500,000 francs or more.

THE RESULTS OF THE REFERENDUM

IF we leave the formulæ of Constitutions and examine the practical results of the referendum in the Confederation and the cantons, we shall make statements which will astonish those who have not seen at close quarters how the institution works. It might be expected that the referendum would make for a pitiless slaughter of the laws which were subjected to it; but this would be a mistake. Although the people knows how to say no, although on more than one occasion it has chagrined Swiss legislators, it also knows how to say yes, and the number of laws and decrees which have fallen victims to the referendum is far smaller than the number of legislative proposals to which the electoral body has given its approval.

The Constitution which governs the Swiss Confederation came into operation in 1874. Of the twenty amendments to the Constitution which have been compulsorily laid before the people since that date—I refer here only to those originated by the Federal Council or the

Chambers—sixteen have been accepted. Only four have been rejected, and one of these was for the establishment of a federal monopoly of the manufacture of matches. The opponents of this proposal fought it on the ground that it was a useless monopoly instituted for the purchasing of factories, the owners of which were said to be unable to afford adaptations essential to the interests of the workers' health. The Swiss people upheld their contention on the 29th September 1895 by 184,109 votes to 140,174. The proposal was rejected by fourteen cantons and three demi-cantons, and accepted by no more than five cantons and three demi-cantons. Since then, this dangerous industry has been strictly regulated for the protection of the health of the workpeople, and nowadays no one would dream of reviving the proposal to make it a monopoly.

In 1894, by a small majority, an amendment to the Constitution was rejected which empowered the Confederation to pass laws dealing with factory and workshop conditions. The idea was taken up again fourteen years later and carried into effect.

Another rejected proposal sought to complete the partial centralization of military affairs instituted by the Constitution of 1874 and to deprive the cantons of the power which had been left to them. The majority of federalists took alarm and found support among those to whom a federal military organization was not a pleasing prospect.

On the 3rd November 1895, by 269,751 votes to 195,178, by fifteen cantons and five demi-cantons to four cantons and one demi-canton, the Swiss people threw out the proposal. Undoubtedly the dualism which reigns in the military administration has its disadvantages; nevertheless, it can hardly be said that this vote has been a misfortune for the country and a cause of weakness in its military institutions.

A fourth proposal, amending Article 64 of the Constitution so as to allow the Confederation to pass laws dealing with patents and the protection of industrial designs and models, was rejected in 1882. It met with this fate owing to its association with an extremely unpopular proposal upon which the people voted at the same time, and to the fact that the body of electors had been inadequately informed of the need for such an extension of federal powers. Some years later, a similar proposal was submitted to the people under more propitious conditions and adopted by a large majority. A majority of 15,042 votes for rejection was converted into a majority of 145,644 votes for acceptance.

All other constitutional amendments presented by the Chambers have been accepted. This was the case with a proposal restoring to the cantons the right of legislating upon the death penalty in 1879, and with the amendment of the article dealing with the liquor traffic in 1885. Again, on the

26th October 1890, the principle of insurance against sickness and accidents was introduced into the Constitution. Then followed in succession in 1891 the application of the popular initiative to constitutional amendments; in 1891 the federal monopoly of bank notes; in 1897 the extension of federal forestry rights and the conferment upon the Confederation of legislative powers in connection with the adulteration of foods; in 1898 the unification of the civil and criminal laws; in 1902 the principle of federal subsidies to the cantons for elementary education; in 1905 the extension of protection for inventions; in 1908 the conferment upon the Confederation of powers to pass laws dealing with water-power and with factories and workshops; in 1913 the extension of federal control of hygiene and sanitation; in 1914 the institution of the federal administrative and disciplinary court; in 1915 the first 'war' tax.

These results justify the assertion that in the matter of constitutional amendments there can be no question of obstruction. The tendency has been to accept, far more than to reject, and when the people has said no, its decision has been justified. A curious case was that of the 'war' tax, decided in 1915. As the repeated and prolonged mobilization of troops for the protection of the frontiers and the behaviour of certain officers had aroused some considerable discontent, it was feared at Bern that the people might be

tempted to a political demonstration, and that the referendum would be not so much an objective vote as an indication of the ill humour of the electoral body when confronted by a tax intended in part to meet the expenses of mobilization. There were even a considerable number who demanded that it should not be submitted to the people, but put into operation in virtue of the plenary powers conferred upon the Federal Council by the Federal Assembly in 1914 and under the plea of urgent necessity. Nevertheless, the Federal Assembly proceeded according to regular constitutional methods, and had no cause for regret. The vote was a startling justification of those who had placed confidence in the good sense of the people. The 'war' tax was passed by a majority unparalleled in the history of the referendum—436,898 in favour, 26,651 against. All the cantons accepted it. It must be said that the matter in question was a steeply graduated tax on wealth and profits, which affected only a minority, but it was established that the great majority of those affected by it had voted in its favour.

It is also to be remarked in connection with these constitutional amendments that in no case was there any divergence between the majority of the people and that of the cantons. Whatever the one did, the other did likewise.

The legislative referendum presents a still more varied and interesting picture than the constitu-

tional referendum. As I have said, in the case of the former a majority of electors only is required for the passing of a law. I have before me a table showing the figures relating to 31 laws or decrees upon which the Swiss people has had to vote from 1874 to 1917. Of these, 12 were accepted and 19 rejected. The proportion seems unfavourable, but it is not so in reality, because, to the laws or decrees accepted by popular vote, must be added the proposals infinitely more numerous upon which the referendum was not demanded, and which took effect with the tacit consent of the people. Here, again, there is no question of obstruction in general, although in one or two instances the obstructionist tendency played some part.

Shall I weary my readers if we make together a little tour of the legislative cemetery where lie the remains of some laws over which their disappointed authors formerly shed tears? We find there a law upon the right of Swiss citizens to the vote and another upon the political rights of the same citizens; victims alike of the difficulty experienced in Switzerland in bringing into agreement the very varied qualifications for the franchise which prevail in the different cantons. Near by, rest two laws instituting a tax upon citizens exempted from military service. At his third attempt, the legislator triumphed over the opposition. Rarely has a law suffered such disaster as that upon epidemics in 1882. It instituted

compulsory vaccination, to which certain cantons would not listen, and imposed, in the interests of public hygiene, restrictions upon individual liberty which appeared excessive. Eventually a more moderate proposal met with practically no opposition.

The 26th November 1882 is a red-letter day in the annals of the federal referendum. By a majority of 146,129 votes, the Swiss people rejected a decree for the appointment of an official whose duty should be to make a general inquiry into the conditions of Swiss elementary education, especially from the point of view of the principle of secularization. But the legislator had committed a great blunder. He had given to this inquiry the unpopular form of a decree appointing a new official, and an indiscretion had brought to light the intention of the Federal Councillor in charge of the home department to bring forward a series of measures of a centralizing character. The Catholic Conservative party preached a holy war, the French-speaking federalists took fright, and the 'bailli scolaire'—as the opposition dubbed him—succumbed after a heated struggle.

Encouraged by this success, the opposition demanded a referendum upon four proposals in 1884. The first of these proposals was for the reorganization of the federal department of Justice and Police; the second for the settlement of the question of commercial travellers' licences; the

third for an increase in the salary of the Swiss minister at Washington, and the fourth, the only one of any political importance, was an addition to the federal penal code. This fourfold demand for a referendum, which the Press had termed 'the federal quadruped,' resulted in the rejection of the four proposals by a fairly narrow majority. This was one of the rare cases which illustrates very well the use of the referendum as an instrument of obstruction, but the success was not repeated. When, in 1887, in the interests of the revenue and of public health, the Federal Chambers passed a bill which permitted the taxation of alcoholic liquors and must have led ultimately to a federal excise duty, a majority of 128,626 votes confirmed their action, and when in 1889 an important bill for the unification of the law for the recovery of debts was brought before the people, all the efforts of the Catholic-Conservative opposition supported by the opponents of certain innovations in the measure, did not prevent its obtaining a majority of 26,396 votes.

A law dealing with the pensions of federal officials and employees retiring through old age or ill-health was defeated in 1891 by an overwhelming majority, which left no doubt of the people's repugnance for pensions limited to certain classes of citizens; but the originators of the proposal had again made the mistake of providing for no contributions by the beneficiaries. A law

for the purchase of the railway system of Central Switzerland was rejected in 1891 by a majority of 158,677 votes. The Swiss people was not enamoured of a scheme of partial nationalization which did not appear an advantageous proposition. Seven years afterwards, to the cry of 'the Swiss railways for the Swiss people,' it adopted by a majority of 203,916 a law for the nationalization of the principal systems. Although a law establishing a State Bank and pledging the credit of the Confederation to an unlimited amount was defeated in 1897 by a majority of 60,220, a law creating a semi-State Bank, in which private capital participated, was not long in obtaining acceptance and in providing the country with a financial institution which has rendered untold service, especially during the course of the world war.

A memorable shipwreck was that of a proposal for the establishment of State insurance against sickness and accident. This work of L. Forrer, who afterwards became a Federal Councillor, was carefully thought out. It formed a logical and well-constructed whole. In the National Council there was on a final vote only one dissentient. The resistance of private insurance companies, friendly societies and those who were afraid of administrative complications, ended in its rejection by the people by a majority of 194,092. Brought forward again some years later and limited to the national-

ization of accident insurance and the subsidizing of friendly societies, the law was passed by 287,583 votes against 241,418. And, on the 3rd November 1907, the friends of the Swiss Army had the pleasure of recording the adoption, by 329,953 against 267,605, of a law dealing with military organization which increased the cantonal quota of the militia, extended the duration of military service and aroused the passionate opposition of the Socialist party. In 1891 and 1903, increased tariffs assuring a moderate degree of protection for industry and agriculture were sanctioned by majorities of 61,070 and 106,878 respectively.

I might continue this enumeration, but as it is it will have sufficed to show my readers that, on the whole, the sins of the referendum are not mortal, and it sometimes happens that the people see more clearly than parliaments.

To the foreigner, Swiss 'referendum campaigns' present features of great interest. The foreigner smiles sometimes at this institution which obliges hundreds of thousands of citizens of all classes, peasants, labourers, artisans, to give their decision upon complicated laws which seem entirely beyond their capacity. The people allowed the 'Code of Obligations' and then the recent Civil Code to be passed without demanding a referendum. This was not the case with the federal law upon bankruptcy and the recovery of debts. The

referendum had been demanded and the problem was to enlighten the electoral body upon the merits of a law designed as a substitute for the legislation of 25 cantons on the same subject. A reply was required at the same time to a host of criticisms and objections to various provisions raised by the jurists of the opposition. It was not an easy task, and yet it was accomplished by means of pamphlets, lectures, public meetings, and energetic propaganda among the classes most interested in the substitution of a single sound law for the chaos of 25 cantonal laws, some of which perpetuated positive iniquities.

I still remember the great meeting at Lausanne organized jointly by the Liberal and the Radical parties, when the Federal Councillor, Louis Ruchonnet, explained and defended the law for which he was mainly responsible. His speech was a model of clear and persuasive eloquence. After his explanation of the principles of the law, citizens whose technical knowledge was of the slightest were astounded at the ease with which they understood. The opposition to the law was in great measure due to party tactics, and Louis Ruchonnet referred to this fact with some bitterness: 'This measure has been awaited, prepared and discussed for twenty years past. It has received the devoted care of nearly all those whom Switzerland counts in the special domain of the law her greatest authorities—men of all shades of

opinion and belief. It has at length reached maturity. We had hoped that, after its approval by the Chambers, the law would not be the object of opposition from the people. At the last moment this hope proved vain; a numerous section stood aside, the referendum was demanded and a great agitation raised in Switzerland. . . . I do not need to tell you that the motives for the referendum have nothing to do with the law itself, but arise from political and religious circumstances of which this unfortunate law is absolutely innocent. A sad and curious picture might be drawn to-day of the reasons which provoked the demand for a referendum. . . . The chief leaders of the party which raised the standard of resistance in the Federal Assembly, did not themselves take part in that resistance. On the contrary, some of the most influential and best qualified among them collaborated in the law, voted for it in committee, and although at the last moment they may have felt it their duty to abstain from voting, were already too far committed to vote against it.'

Louis Ruchonnet concluded his address by saying: 'The demand for a referendum upon a subject of this kind rouses many suspicions. When a non-political measure, which is no concern of parties and constitutes no breach of their principles, is made the occasion for a political crisis, when we realize that it is possible, upon the pretext of opposition to a law upon the recovery of debts, to

gather under a more or less demagogic flag a number of discontents which have no connection whatever with that law, one wonders uneasily whether the referendum is a good institution. Believing, as I do, that the referendum is a valuable institution which can render genuine service, I desire that both this particular measure and the referendum itself shall emerge triumphant from the ordeal. If a few agitators can make every law an occasion for rallying grievances of all kinds, it should, in my opinion, be the duty of every good citizen to oppose this obstructionist tendency and by hastening with enthusiasm to the ballot to ensure the triumph of truth and the best interests of the country.'

On the day of the vote, the law emerged victorious from the ordeal, by a small majority, it is true, but probably it would have been less readily accepted in practice if it had not had to undergo this test and if the people had not been obliged to acquaint themselves with the necessity and the value of this new legislation. Thanks to the ground on which the opposition had taken its stand, the result was at the same time a great political success for those who had originated and supported it.

If the patience of my readers is not exhausted, I must now ask them to bear with me a little longer, while I survey the vast field of the cantonal referendum. There will be a rich harvest of

observations to be gathered. An approximate summary of the results of the referendum in cantons not possessing a Landsgemeinde between 1906 and 1916 gives 229 laws or decrees accepted and 73 rejected. These figures, which do not pretend to rigorous exactitude, do not include all proposals accepted. It would be necessary to add for the cantons with the optional referendum all those—the great majority—which were sanctioned tacitly by the people. I do not think I am very far from the truth in saying that on the whole the laws rejected do not exceed one-eighth of the total. This proportion is about one-quarter in the cantons where the referendum is compulsory; for the rest it is very small if one takes into account the laws and decrees coming into operation without provoking a demand for a referendum.

To illustrate the nature of the proposals rejected by the people, I give a selection of the cantonal laws and decrees which did not find favour with the people from 1911 to 1915.

In 1911, Basel-Stadt rejected a tax on land values, and Basel-Land a law on the payment of officials and employees. Solothurn inflicted the same fate upon a similar law and also one dealing with a weekly day of rest. In Ticino, it was an educational law which foundered, and a law for the institution of communal council. Valais rejected a law for the adoption of the Swiss civil code; Vaud a proposal for a loan of ten million francs;

Zürich a law dealing with the stock-exchange, and a cantonal law applying the federal law for the recovery of debts.

In 1912, I note the following rejections: Aargau a law for the release of criminals on ticket of leave; Basel-Land again a law upon the payment of officials; Basel-Stadt a special tax for the cleaning of streets; Bern a new tax; Geneva a credit for the reconstruction of the 'Electoral Building' and a law dealing with university matters; Thurgau a law raising the salary of the Attorney-General from 2,600 to 5,500 francs, and another dealing with courts of arbitration; Zürich a law rendering married women ineligible as elementary school teachers and a proposal for the extension of the cantonal high school.

In 1913, Aargau rejected a law on the payment of teachers and an electoral law; Basel-Land a licensing law; Zug a game-law; Zürich a law regulating road-traffic and motor vehicles; Ticino a law increasing the salaries of councillors and officials.

In 1914, Bern turned down a law substituting the leasing out of preserves for the system of game-licences; and Schwyz a new tax.

In 1915, the same fate was inflicted in Grisons upon a law on fishing rights; in St. Gall upon a law for the insurance of cattle; in Solothurn upon a proposal for the adoption of the federal law for sickness and accident insurance; in Ticino a law

for the imposition of succession duties; in Zug a licensing law.

The laws or decrees which the people seem to have most difficulty in accepting are those fixing the remuneration of magistrates, officials or employees, or creating new offices; new taxes; and laws which restrict individual liberty or appear to maintain privileges. It sometimes happens that the legislator has to return twice or thrice to the charge. Very rarely, however, does he fail in the end after making concessions to the state of public opinion. Here and there, the persistent refusal of the people has resulted in a kind of interdict upon offices which are ludicrously remunerated, a strike of candidatures; but such cases are exceptional. The important thing to notice is the effect of the referendum upon the legislator. Knowing the hostility of the people towards salaries at all excessive, he is obliged to take this into account in drafting proposals. Occasionally, even, he lops off provisions which are good in themselves but which he knows would be unpopular and perhaps involve the rejection of the bill by the people. Proposals for taxation are difficult to pass. More than once, however, very radical laws have been carried by a substantial majority after the rejection of less extreme proposals or proposals effecting only partial reforms.

It might be imagined that the *financial* referendum is particularly murderous, but such is

not the case. In a very illuminating work, published recently, Dr. Paul Kaufmann has made a detailed study of the effects of this institution which exists in all cantons with the exception of Fribourg, Innerrhoden and St. Gall. The financial referendum, as we have seen, applies to the alienation of cantonal property, loans, the imposition of new taxes, the fixing of salaries, substantial extraordinary expenditure, etc. Taking one after another all the cantons in which it is operative, Dr. Kaufmann shows that, since 1890, inclusive of the cantons possessing a Landsgemeinde, the financial referendum has resulted in the adoption of 82 proposals and the rejection of 26. Thus the proportion of victims is one quarter; but, in this case also, to the first figure must be added the considerable number of proposals adopted tacitly in the cantons where the financial referendum is optional. Almost all the cantonal officials consulted by the author give a favourable opinion upon this application of democratic principles. The only exception is the canton of Aargau, where the proportion of rejections exceeds one-half and the State has been deprived of wellnigh indispensable resources by a majority of electors. Probably this result must be ascribed, not to the referendum, but to political, sectarian, local and personal divisions which for many years have hindered the normal political development of this canton.

The people is not staggered by heavy expen-

diture or big loans, but it is essential for it to be informed of the exact purpose of such expenditure and to be shown that it is required by the public interest. On more than one occasion, proposals for loans have been rejected when governments and party leaders have neglected to enlighten the people adequately, and passed in the following year after a better organized campaign of propaganda. Although very niggardly in small matters, especially the amount of salaries, the electoral body does not adopt a stubborn attitude at all towards proposals on a large scale. In the cantons of Bern, Vaud, Zürich and many others, millions and millions of francs have been granted for trans-Alpine railways, educational establishments, electricity generating stations, road improvements, etc.

At times, one might be tempted to think that the majority of electors follow passively a tendency to vote always yes or always no. The contrary, however, is proved by the results of the popular vote in the cantons where the referendum is compulsory and the electors have to vote upon a number of laws and decrees of different kinds on the same day. The elector is well able to distinguish. He accepts some and rejects others, and has no difficulty in giving the reasons for his vote.

Thirty years ago, the people of Zürich rejected an excellent education bill upon which the Cantonal

Council had expended vast care and which had the support of all parties. The result caused stupefaction and people began to call democracy in question. 'The 9th December 1888,' wrote the *Neue Zürcher Zeitung*, 'is a black page in the history, not only of our canton, but of the referendum. If anyone desires to condemn the Confederation to political stagnation, let him introduce the compulsory referendum and so entrust the fate of our country to all the enemies, conscious or unconscious, of political progress.' The situation was not as desperate as this, and it was not many years before the disaster was repaired. It should be stated that the compulsory referendum, which had been in operation in Zürich for eighteen years, requires a more or less lengthy apprenticeship. It has to outgrow the follies of youth, and some time must elapse before politicians can control it. Very rarely in Switzerland has any reform not been realized which is in accordance with sound principles and real needs—if not at the first attempt, at any rate a little later after the legislator has taken into account the reasons for the unpopularity of the proposal or been at more pains to get it understood.

Although a partisan of the referendum, I am far from pretending that this method of consulting the people is faultless. Apart from accidents, there are periods when it is traduced by evil popular instincts, when it comes under the influence of local

rivalries, and when it serves as the instrument for the spirit of routine or narrow Conservatism or as the tool of demagogues. But this does not last very long, and the people recovers its good sense and its appreciation of the responsibilities of citizenship. The army of those whom the German-Swiss call 'Neinsager,' persistently negative electors whose vote is an expression of incurable discontent, seems to me to have diminished during the last thirty years. It is true that from time to time opposition parties still make use of the referendum as a weapon for obstruction and as a method of wresting concessions from their opponents by hindering the normal working of the political machine; this, however, happens perhaps less frequently than formerly.

Besides these drawbacks, the referendum offers many advantages which I have already emphasised. It is the surest method of discovering the real wishes of the people—an excellent barometer of the political atmosphere. It compels the legislator to conform with the aspirations of the people, if he does not wish the fruit of his labours to perish. It puts an end to acute conflicts between people and governments, and provides one of the safest barriers there can be against revolutionary agitation. Nothing can give greater offence to those anarchist or 'Bolshevist' sections which wish to establish the rule of active and violent minorities. Public opinion is at once ranged against anyone

who rebels against the verdict of the majority expressed according to legal forms. Should the collectivists ever gain power, the practice of the referendum would be a considerable obstacle to certain of their social experiments. In Switzerland, the federalists, who did not look favourably upon the introduction of the referendum into federal affairs, have used it with success more than once in opposition to measures of premature centralization. In the cantons, the referendum has acted as a curb upon democracy, and it is quite possible that it may develop in a similar manner in the Confederation.

Evidently the referendum cannot always be regarded in the same light by the people and by the government and its supporters. When a statesman, a Council and parties have taken enormous trouble to bring about an important reform, and the labour and efforts of many years are nullified by the caprice of the referendum, the disillusionment, sadness and pessimism of the legislator are easily understood. But then the essential thing is not to throw the handle after the hatchet but to seek laboriously for the causes of the rejection and to act in such a way as to remedy the evil.

The people of modern democracies is no longer the irresponsible *demos* which Aristophanes pilloried with his mordant pen in the *Knights*—a brutal, elderly and irascible epicure, a willing prey to the basest flattery. To-day, it is

usually clear-sighted and obedient to its best impulses when its leaders know how to enlighten it by appealing to them; but for this they must remain in constant contact with those they lead. Incessant struggle is the invariable accompaniment of the political life of democracies, more so than of any other form of government. There is perpetual conflict between the spirit of progress and the spirit of reaction. The forces of inertia and disintegration must be fought incessantly by those which make for the healthy development of political and social institutions and their better adaptation to the needs of the time. It is this struggle which is so finely expressed by Louis Ruchonnet at the end of the speech from which a quotation was given above.

I fully realize the inadequacy of my treatment of the referendum. I know only too well that it could easily be made more exhaustive. But I have already dwelt long enough upon the subject, and pass on with all possible speed to another democratic institution, which is the complement of the referendum. I refer to the popular initiative, a subject which will be dealt with in the two following chapters.

VI

THE POPULAR INITIATIVE

THE referendum either confirms or destroys. The initiative reverses or constructs and results sometimes in strange disturbances in the constitutional and legislative edifice. But what is this right of popular initiative? In Switzerland the term is applied to the right of a section of the people to bring forward a proposal of a constitutional, legislative or administrative character for the decision of the sovereign electorate. As soon as the proposal is supported by the number of signatures fixed by law, the popular vote must take place. In this respect, the initiative is distinguished from the simple petition, upon which Councils are not compelled to take action. The initiative has this much in common with the optional referendum: a fairly considerable number of signatures must be collected to set it in motion. But it differs from both types of the referendum in that it creates a new right. With the referendum, the co-operation of the people in the business of legislation is of a quasi-passive character; with the initiative it is an active and directing force. The proposal

originates with the people, or at least with a fraction of the people, and if approved by a majority of the electoral body, it becomes from that moment part of the law or the constitution on an equal footing with bills voted by the Chambers. While the referendum adds nothing to the rights of peoples which possess the initiative, the initiative extends the rights of those which possess the referendum only: in the majority of cantons, it permits decisions of the Great Council to be attacked which are beyond the scope of the referendum.

The initiative, however, is not exercised by the people entirely without the co-operation of the representative councils. Almost always the latter have the right to give their opinion upon popularly initiated proposals and to oppose counter-proposals of their own, if they so desire. With the referendum, the people is deemed to give its opinion, explicitly or implicitly, upon all the important actions of the Councils; with the initiative, the people intervenes only in exceptional cases in order to modify or to complete legislation. Like the referendum, the initiative has remarkable consequences. It impels Councils to pass laws or take action upon which they would not agree but for fear of the initiative in their rear. The initiative also has the special virtue of setting a term to serious conflicts which may arise between the people and its rulers. Nowadays, the initiative

suffices to settle a dispute which formerly would have ended in revolution—as, for example, the case of a government obstinately maintaining a system of electoral units which falsifies the expression of the national will ['jerry-mandering']. The right of initiative, gained after untold efforts by parliamentary assemblies, has become in Switzerland a right of the people, and the use which the Swiss people has made of it is not a condemnation of the institution.

The right of popular initiative applies in Switzerland both to the Constitution and to laws; but the Confederation does not yet possess it in application to legislative proposals, whereas all the cantons except Fribourg practise it both in constitutional and in legislative matters. It is exercised in two distinct ways: the first one is the method of the 'motion,' as the Swiss Constitutions term it, the other that of the 'formulated initiative,' in which the proposal is presented in full.

In the highly interesting works which he has published upon the referendum, the late Professor Jacques Berney expresses the view that the so-called 'formulated initiative' alone safeguards in entirety the right of the initiators. With the 'motion,' he says, after the proposal is accepted by the people, the representative body can easily give to the bill which it is called on to draft, a form which is contrary to the views of the peti-

tioners or even such as to ensure its rejection by the sovereign people in the last resort. I do not think that this drawback is met with in practice. When the people accepts a popularly initiated 'motion,' the Council respects its decision and does not seek to evade it. The 'formulated initiative' has the advantage of necessitating only one popular vote, but on the other hand it has certain serious defects. Whatever care its authors expend upon the drafting of their bill, it is often found that it is out of harmony with other constitutional or legal provisions or that its authors fail to hit upon the best expression of their ideas. A proposal in general terms, upon which the legislative body proceeds carefully and skilfully to draft a bill, would have better chance of success in the final vote.

I shall give as an example the federal initiation of a demand for the application of proportional representation to the election of the National Council. In all probability it would have been accepted if its authors had not introduced into it a much-contested provision making each canton a constituency, which caused many supporters of proportional representation to abstain from voting. One of the disadvantages of the 'formulated initiative' is its liability to be at variance with rights guaranteed by law or the Constitution. In the cantons this disadvantage has not the same weight as in the Confederation. The Federal

Court is empowered to annul decisions of the people contrary to the constitutional rights of citizens, and the ordinary courts can grant legal indemnity to those whose private rights are infringed by such decisions. This is not the case with the Confederation. The Federal Court does not have to pass judgement upon the decisions of the Federal Assembly or the people. The Constitution obliges it to apply them.

In the Confederation, the right of popular initiative is restricted to constitutional changes; but even with this limitation it lends itself to extraordinary extension, as may be inferred from the acceptance by a majority of the people and of the cantons of a demand for the prohibition of the slaughter of beasts according to Jewish rites. The Federal Constitution regulates the initiative in the following manner.

In the case of a total revision of the Constitution, the question is laid before the people if 50,000 citizens support the demand (unless, of course, the revision is decided upon by the Councils). If revision is approved by a majority of the people, the two Councils are renewed and draft a bill which only comes into operation after its adoption by a majority of the people and of the cantons.

The Federal Constitution of 1874 contained no provisions for the partial revision of the Constitution by means of the initiative. This right was

reserved to the Councils. It was transferred to the people in 1891. Article 121 states that the popular initiative consists of a demand presented by 50,000 citizens for the passing of a new article or the repeal or amendment of any specified articles of the Constitution. If a number of proposals are presented, each of them must be the subject of a separate demand. The initiative may take the form of a proposal in general terms or of a fully drafted bill.

When a proposal is initiated in general terms, the Councils, if they approve of it, proceed with the partial revision indicated and submit their bill to the people. If the Councils do not approve of the suggested proposal, the question is placed before the people. In the case of an affirmative reply, the Federal Chambers proceed to make the revision decided on by the people. When the Federal Chambers are confronted with the full draft of a bill, they may approve it or propose its rejection or submit a counter-proposal to the people, but, in each case, the popularly initiated bill must be submitted to the people and to the cantons as it is without amendment or addition. Up to the present, however, the Federal Assembly has never made use of its right to present a counter-proposal.

The manner in which the initiative has been introduced into the Federal Constitution has provoked more than one criticism. Among them is

one relating to the absence of any restriction upon the federal constitutional initiative, although there is no federal legislative initiative, i.e. no right of initiating laws other than those dealing with the Constitution. The Federal Assembly has endeavoured to introduce the legislative initiative, but it has encountered the difficulty of safeguarding the principle of federalism. With the legislative initiative, what becomes of the double share of people and of cantons in federal legislation which is carried out by the co-operation of two Chambers, each representing one of these elements? To dispense with the vote of the cantons, as in the legislative referendum, would be to introduce legislation by the people alone and to enshrine in the Constitution a principle with far-reaching consequences. To require a majority of cantons would be to invite dangerous conflicts between a majority of the cantons and a majority of the people. The case of the legislative initiative is on all fours with that of the compulsory referendum and the election of the Federal Council by the people. Principles accepted in the cantons under the weight of tradition involve serious disadvantages when transferred to a sphere in which the power of the State is partitioned between two sovereigns. But the meshes of Article 121 are so wide that in reality the present federal initiative may be applied to all kinds of legislation, if only it is put in the form of a constitutional provision.

In every case, of course, a majority of the cantons is required as well as of the people.

M. Jacques Berney drew attention to the extraordinary scope of Article 121. In the work from which I have already quoted, he wrote: 'The restriction of the "formulated" initiative to partial revisions of the Constitution is purely formal; in actual fact the right is absolutely unrestricted. Any proposal whatever, whether constitutional, legislative, administrative or judicial in character, must be submitted to the people if it is brought forward in the form of an article of the Constitution. Indeed, no provision of the Federal Constitution or of any federal act superior to the Constitution prescribes the subjects which alone are to be regarded as constitutional in character; no text fixes the boundary between the Constitution on the one hand, and laws, decrees and orders on the other. . . .

'Any citizen can, if 49,999 colleagues support his demand, obtain a vote of the Swiss people and cantons upon any proposal whatever, provided that externally it takes the form of an article of the Constitution. . . .

'By means of the initiative, then, the Swiss people can govern itself freely in all matters. It can make laws, adopt a penal code, naturalize aliens, pardon the condemned, contract loans, convert the national debt, grant subsidies, conclude treaties and denounce them, declare war and make

peace, institute tariffs, abolish taxes, try disputes, pronounce judgement, quash the sentence of a court, condemn a citizen to death, etc. It can take any decision whatever, upon the sole condition that it inscribes it in the Constitution. Yet further, it can turn against constituted authorities, refuse to ratify their actions, saddle them with an imperative mandate, prorogue or dissolve them at any time, and even strip them of their functions.'

There is a strain of humour in the interpretation of the lamented Lausanne professor, which, however, is logically correct. But men do not act strictly logically, and when applying a principle they are able to take into account the principles limiting its application. It was once said that France was an absolute monarchy tempered by song. It might be said that Switzerland is a democracy tempered by good sense. In our age, the principle of the separation of powers is too firmly established for the people to try to meddle in judicial matters or to make decisions obviously beyond its competence and calculated to throw the machinery of politics and administration out of gear. What used to happen in the old Landsgemeinden is hardly possible now. The good sense of the public and the advance of civic education would offer a solid barrier to such caprice. If the popular initiative is to set in motion an electorate of 900,000 citizens, it must submit

reasonable proposals, harmonizing with the general character of the country's institutions. Apart from the rather secondary question of the Jewish slaughter of beasts, which brought humanitarians and anti-Semites into the same camp, the Swiss people hitherto has made no use of the federal initiative contrary to the general principles of the Constitution and the rules of good sense. I shall return later to this point, when I examine certain of its results.

As we have seen in the historical summary, the initiative took root in Switzerland in 1845, when the canton of Vaud incorporated it in its Constitution. It will perhaps be useful if I give here, as I did for the referendum, some of the cantonal provisions relating to the initiative.

All the cantons, except Fribourg, possess both the constitutional and the legislative initiative. The constitutions of the cantons with Landsgemeinden place practically no restrictions upon the scope of the initiative. This is also true of the canton of Vaud, where the only restriction is to the effect that the constitutional initiative must be in general terms. Except in Zürich, Zug and St. Gall, where the subject matter of the initiative coincides with that of the referendum, and in Schwyz, Aargau and Schaffhausen, where it is less extensive, the scope of the initiative is far wider than that of the referendum. The initiative

enables to be brought before the people numerous degrees or orders which in principle are exempt from the referendum.

The right of initiative of qualified electors, states Article 29 of the Constitution of Zürich, is the right to demand the passing, the repeal or the amendment either of a law, or of a decree which is not exclusively within the competence of the Cantonal Council. These demands may be offered in the form of a simple motion or that of a fully drafted bill. In either case, a reasoned statement must be given in support.

When a citizen or an authority presents a demand of this kind and it is supported by one-third of the members of the Cantonal Council, the people is called upon to give its decision. The author of the proposal or a delegate of the authority has the right to present the case for it in person before the Cantonal Council, if twenty-five members at least of this Council support the request to be heard.

A vote of the people must also be taken when 5,000 electors or a number of assemblies of communes in which 5,000 electors have voted in that sense initiate a demand, unless the Cantonal Council adopts the proposal initiated. A motion presented at the proper time must be submitted to the people at the latest by the second ordinary vote which follows.

Before the vote, the motion or the bill must

always be submitted to the Cantonal Council for it to give its opinion.

When an initiated law is submitted to the vote, the Cantonal Council can present an alternative proposal.

Similar provisions apply to the constitutional initiative.

The provisions of other cantonal Constitutions resemble these more or less closely. Differences occur in the extent of its application, the intervals of time, and the number of signatures required, which is always somewhat small so that there may be no obstacle to the exercise of the right. The 'formulated initiative' has prevailed in nearly all cantons. As has already been seen, in many cantons it enables the people to give their verdict upon laws or ordinances which escape the referendum. The Constitution of Schaffhausen lays down that, in the case when a proposal and a counter-proposal are presented simultaneously to the people, the one which obtains an absolute majority of votes is to be considered adopted, and if neither obtains an absolute majority both are rejected. The Constitution of Grisons renders the initiative inapplicable to laws which have come into operation within less than two years, as well as urgent decrees of the Great Council. In Bern, when the Great Council does not give effect to a popularly initiated motion, it may address a message to the electors explaining its point of view.

In Fribourg, the initiative applies solely to the case when 6,000 citizens support a motion for the total or partial revision of the Constitution. In Neuchâtel, when the Great Council declines to take up a popularly initiated proposal, it may, as in Bern, explain to the people the reasons for its decision or present a parallel proposal. In Geneva, when the electors have the choice between a proposal brought forward by means of the initiative and a counter-proposal of the Great Council, they have the right of voting in favour of both, whereas the federal law in the parallel case authorizes two negative votes but only one affirmative. The Constitution of Vaud provides that the assemblies of communes have the right of voting upon any proposal initiated by 6,000 qualified citizens, subject to the reservation that the 'formulated initiative' is not allowed upon constitutional matters.

Readers who may desire fuller details will find them in the *Recueil des constitutions fédérales et cantonales*, published by the Federal Chancellery in 1910. But this work is already rather out of date. Constitutions are no longer the durable structures they used to be, remaining untouched for years on end. They have become plastic, always changing in some detail or other, and scarcely a year passes without one or another of them undergoing more or less important alterations or additions. It should be added that the total revision of Constitutions has become a less fre-

quent occurrence. Both Confederation and cantons now prefer the method of adaptation to the needs of the day by specific amendments and find hardly any attraction in the upheaval of a general revision which was often the favourite weapon of parties aiming at the overthrow of a government.

VII

THE RESULTS OF THE INITIATIVE

IF one had spoken of the initiative to M. Guizot, the famous doctrinaire statesman of the July monarchy, he would have demonstrated with his wonderful eloquence that it was the enthronement of anarchy in government and in legislation. The great historian believed that representative government, exercised by the upper middle class, was adequate recognition of democracy and the surest guarantee of political liberty. Direct government by the people seemed to him an utterly subversive idea. And yet, had the initiative existed in France at that time, it might perhaps have maintained Guizot in power and Louis-Philippe on his throne. Revolution swept them both away.

Those who are not familiar with the effects of the initiative in Switzerland might be tempted, as in the case of the referendum, to believe that it was a source of great embarrassment to governments and a cause of serious disturbance in legislation. This, however, is not the case. The direct and indirect effects of the initiative are quite clear

but they are in no respect revolutionary, and although the initiative is not so conservative a force as the referendum, it is still very far from being a subversive institution. It has not been so hitherto in any case. On the occasion when the Swiss Socialists attempted to utilize it for incorporating the right to work in the Constitution, their defeat was complete, and none of their other efforts has met with any more success.

Since the application of the initiative to the partial revision of the Federal Constitution, in 1891, the Swiss people has made use of it ten times in twenty-six years. It is worth while to examine each of these cases.

The first—to which I have already had occasion to refer—was that of the initiative[1] for the prohibition of the slaughter of beasts not previously rendered unconscious. Sensitive people denounced the Jewish method of slaughtering as inhumane; a gust of anti-Semitism did the rest. The proportion of electors who recorded their votes was very small. Out of 668,913 electors on the register, 191,517 voted for the proposal and 127,101 against. Ten cantons and three demi-cantons voted in favour, and nine cantons and three demi-cantons to the contrary.

The second initiative, put forward by the Socialist

[1] In current usage in Switzerland, the word 'initiative' is employed to mean both the right of popular initiative and the demands presented to the people in virtue of that right.

party, was a demand for the recognition of the right of every Swiss citizen to adequately paid employment. Federal, cantonal and communal authorities were to render this right effective by all possible means. This ghost of 1848, so dear to the Socialists of that period, received a frigid welcome from the Swiss people. There were 75,880 affirmative votes and 308,289 negative.

In 1894, the Catholic Right and the Protestant extreme Right combined upon a proposal to weaken the Confederation to the advantage of the cantons by decreeing a division of the revenue from customs, which constituted the chief financial resource of the Confederation. This attack—67,828 electors had given their signatures in support of the demand—was repulsed by 350,639 votes. The number in its favour was 145,462. Seven cantons and three demi-cantons were for acceptance, twelve cantons and three demi-cantons for rejection.

On the 4th November 1900, a demand initiated by the Socialist, Catholic Conservative and Liberal parties for the application of proportional representation to the election of the National Council, was turned down by 241,666 to 169,008 (10 cantons and 3 demi-cantons to 9 cantons and 3 demi-cantons).

On the same day, an initiative proposing the election of the Federal Council by the people was

also refused by the people and the cantons. The number for rejection was 270,522, for acceptance 145,926 (12 cantons and 4 demi-cantons to 7 cantons and 2 demi-cantons).

In 1903, a proposal supported mainly by the rural population and aiming at the election of the National Council upon the basis of the *Swiss* population and not upon that of the total population, including foreigners, was rejected by 295,085 to 95,121 (16 cantons and 4 demi-cantons to 3 cantons and 2 demi-cantons).

In 1908, an initiative conferring upon the Confederation the right of legislating upon the utilization of water-power resources was withdrawn by its authors, who had obtained satisfaction in the meantime from the Federal Council, which itself submitted to the Chambers an addition to the Constitution upon the lines proposed.

On the 9th July 1908, the Swiss people passed by 241,078 votes to 138,669 an initiative prohibiting the importation, manufacture and sale of absinthe or its imitations.

On the 3rd October 1910, a second attempt to introduce proportional representation was rejected by 265,194 to 240,305, but this time without a majority of the cantons.

Finally, in 1918, a Socialist proposal for the introduction of a direct federal tax, which was supported by the great federal associations of officials and employees, was rejected by 321,000

votes to 275,000 and by 13 cantons and 3 demi-cantons to 6 cantons and 3 demi-cantons.

Four other initiatives are now pending, and will shortly be submitted to the people. The first, which is a renewal of the attempt to obtain proportional representation, will have been decided by the time this is published.[1] The three others are aimed at the submission to the optional referendum of international treaties, which have a duration of more than thirty years; the abolition of military courts; the entire prohibition of games of chance ('boule' and 'petits chevaux') still permitted in certain casinos and kursaals.

Thus, out of ten initiatives submitted to the Swiss people, only two have obtained its approval, and even should forthcoming votes increase the number, it will be agreed that there is no reason for disquiet over a period of about thirty years.

I shall dwell a little on two of these initiatives—that which led to the prohibition of absinthe, and that which sought to introduce a direct federal tax. Both are typical.

Towards the end of August 1908, a horrible crime was committed in the village of Commugny, close to Coppet, in Vaud. A French labourer named Lanfray, in a state of semi-drunkenness, had quarrelled violently with his wife, wrecked his

[1] It was adopted on the 13th October 1918 by 299,550 votes to 149,035 (19½ cantons to 2½).

home, and then taken a gun and shot one after the other his wife and his two daughters, aged four years and one year and a half. A great stir was caused by this crime throughout the country. Lanfray was a drinker. He was especially addicted to liqueurs, to vermouth, brandy, and absinthe. The opponents of absinthe judged it a favourable opportunity to have done with the evil, and addressed themselves to the Great Council of the canton of Vaud. It would have been possible for them to make use of the initiative and obtain an immediate vote of the people. They could have collected without any difficulty the 6,000 signatures required by the Constitution. But the result would have been doubtful in a vine-growing country, where teetotalers are not in good odour and are suspected of harbouring much wider intentions than the prohibition of one drink. The enemies of absinthe preferred to test opinion by organizing a general petition, in which women and foreigners could participate. They succeeded beyond all their expectations. The petition was signed by 34,355 men and 47,769 women. The Great Council of the canton of Vaud took the moral to heart, and voted the prohibition of absinthe.

Then came the turn of the consumers and distributors of absinthe to react. They themselves had recourse to the initiative (the Vaud form of the referendum), demanded the repeal of the law

and obtained a vote, which confirmed the decision of the Great Council. 22,733 electors voted for the maintenance of the law, and 15,811 for repeal, after a campaign of newspaper articles and public meetings in which both the medical and the clerical profession took an active part in favour of prohibition.

From Vaud the movement spread to Geneva, where prohibition was carried by a small majority, but it was not applied rigorously, and its opponents threatened a renewal of their attack. It had become obvious, moreover, that cantonal prohibition was inadequate. Transport by post and by rail remained unrestricted, and evasion was the simplest of matters. To complete their task, the temperance Societies decided to extend the movement to the whole of the Confederation, taking advantage of the fact that in German Switzerland the consumption of absinthe was a negligible quantity. They obtained 167,874 signatures to a 'formulated initiative' demanding the prohibition of the manufacture, transport, importation and sale of absinthe and imitations of absinthe. In the Federal Chambers the Federal Council showed little favour to prohibition, which was fought especially by representatives from centres of culture and from absinthe-producing districts. Nevertheless, the majority supported the initiative, and recommended the people to accept it. On the 9th July 1908, the campaign ended in the adoption of the initia-

tive. The proportion of voters was rather small in German Switzerland. I have already given the figures of this vote, as a result of which the consumption of absinthe has fallen to practically nothing.

The last federal initiative was a consequence of the war. To redeem a portion of the debt of over a thousand milliard francs which the Confederation had incurred through the mobilization of the army, and to meet the interest on this debt, the Federal Chamber passed a steeply graduated war-tax, a tax on war profits, and raised postal and telephone charges, etc. When the Federal Council displayed its intention of having recourse again to the war-tax and to certain indirect taxes, especially on tobacco, the Socialist party, which was opposed to indirect taxation, thought it a favourable opportunity for launching an initiative for the introduction of a permanent, direct federal tax. Its proposal was put before the electorate in the most attractive guise. The tax was to be levied only upon tax-payers with a capital exceeding 20,000 francs and with an earned income exceeding 5,000 francs. It was calculated that only 8 per cent. would be affected. The Federal Council and the Chambers refused their adhesion to this initiative. A fierce campaign ensued. The Socialists had succeeded in winning for their proposal the support of the leaders of the associations of federal officials, employees and workmen, certain sections

of 'Young Radicals,' and even here and there in German Switzerland some Radical elements. The initiative was a grave danger for the federalists. If the Confederation once obtained the power of imposing a direct graduated tax, over and above similar taxes imposed by the cantons and the communes, the result must be the financial weakening of the cantons and the eventual unification of direct taxation. One of the authorities upon Swiss constitutional law, M. Hilty, had ventured to assert that the exclusive right of direct taxation was the clearest example of the sovereign powers still retained by the cantons!

The bulk of the Radical party, especially in French-speaking Switzerland, the Liberal party and the Catholic Conservatives organized an active opposition to the initiative, while the Socialists made their appeal to the lowest instincts of human nature. On the eve of the poll, a cartoon in one of their chief papers depicted the initiative as a cannon discharging a shell to blow up the strong-boxes of the capitalists. The initiative was rejected by a majority of the people and of the cantons, but the actual majority of votes was inconsiderable, and those federalists who, in 1891, assisted the introduction in the constitution of partial revision by means of the initiative, have come to realize the dangers with which this institution threatens the principle so dear to them. It is not always easy to make the electors understand

that a measure, although intrinsically sound, should be rejected because it disturbs the balance of the federative institutions, and would involve a redistribution of powers between the Confederation and the cantons. Hitherto the *federal* initiative has not been a source of difficulties for the Confederation, but it may conceivably lead to some surprises.

In the cantons, where the question of the distribution of sovereign powers does not arise, the initiative has been found even less objectionable than in the Confederation. An examination, similar to that made in the case of the referendum, of the results of the voting upon cantonal initiatives from 1905 to 1916—the cantons with Landsgemeinden excluded—shows that, out of thirty-six proposals initiated, twenty-six have been rejected and ten accepted. This indicates that the people is much more circumspect and discreet about proposals coming from one or another of its sections than about the laws and decrees passed by its representatives. The majority of initiatives for a reform of the system of taxation figure among the rejected proposals. Quite recently, however, the canton of Bern has succeeded, after more than one failure, in improving its system of taxation, thanks to an initiative which had the almost unique good fortune of gaining the support of both Socialists and Radicals.

As the initiative is, above all, a weapon of

opposition, it is not surprising that minorities avail themselves of it for the purpose of introducing a system of proportional representation. But usually they achieve their aim only after repeated attacks and a split in the governmental party. In the canton of St. Gall, it was only at the fourth vote that a coalition of Catholic Conservatives and parties of the extreme Left carried their bill for proportional representation after three failures. In Basel-Stadt, too, three attempts were necessary to reach the same result. In Zürich, the proportional scheme submitted to the people by the Great Council was rejected in 1911 by 42,197 votes to 39,474. In 1916, a proposal submitted by initiative was carried by 48,672 to 41,919. In Aargau, proportional representation was rejected by 24,272 to 14,499.

Among other rejected initiatives, I may mention in Geneva one for compulsory State insurance of personal property, and another for the throwing open of the legal profession; and in Basel-Stadt an initiative in favour of compulsory voting. The initiative has one success to its credit in the canton of Solothurn, the institution of a fund for insurance against old age.

It is interesting to note that the canton of Vaud, where the scope of the initiative is unrestricted, is one of those which have made least use of this institution. From 1845 to the present day, seven initiatives are recorded. The first, in

1851, sought to make the holding of certain public offices a disqualification for membership of the Great Council. It was accepted. The second, in 1863, proposed the repeal of a law instituting a tax on personal estate. The people replied in the negative and upheld the law. The third, a 'formulated initiative' making the holding of certain cantonal offices a disqualification for the position of deputy in the Federal Chambers, was adopted in 1883. In the same year, the electorate approved an initiative for the total revision of the Cantonal Constitution by means of a Constituent Assembly. In 1901, the initiative was again set in motion for the repeal of a law for the observance of the Sabbath, just passed by the Great Council. The authors of the initiative carried the day by a majority of a few hundred votes. The last two initiatives aimed at the repeal of a law for the prohibition of absinthe (1905) and at the direct election of the State Council by the people. The first came to nothing, but the second was carried.

It is noteworthy that two important decisions—the abolition of State assistance to the Church in Basel and Geneva—were taken by the Great Councils and not as a result of initiatives. Both were approved by the people, and one has some right to speak, as in the case of the referendum, of the stimulating effect of the initiative upon the activity of the legislative authorities. It induces

them to keep a keen watch on the needs of the time. The majority of constitutional changes in the later period have taken place upon the initiative, not of the people, but of the Great Councils.

VIII

THE ELECTION OF THE GOVERNMENT AND OFFICIALS BY THE PEOPLE

WHILE in the majority of European countries the members of the government, the ministers, are chosen by the head of the State from the majority of the Chambers, in Switzerland they are selected in nearly all cases directly by the people. This was always the case in the cantons possessing a Landsgemeinde. In the rest, the appointment of the government was originally within the sphere of the Great Councils; but as early as 1846 in Geneva the Radicals restored this privilege to the people, and since then almost all the other cantons have followed suit. There are now only two, Valais and Fribourg, where the State Council is still appointed by the Great Council. Whether the government is elected by the people or the Great Council, a peculiarity of the institution in Switzerland is the absence of what is called parliamentary responsibility. A State Council placed in a minority of the Great Council or of the people does not resign. It conforms with the expressed will of the majority, and continues

in office till its legal term expires. 'The Swiss people disowns its representatives and then re-elects them,' said Marc Monnier in a much quoted quip which has a foundation of truth. The Swiss people does not believe that its officers and deputies are infallible, but it does not care to deprive itself of their experience and their services because, upon one point or another, it finds itself in disagreement with them. If the disagreement is chronic and persistent, it waits for the time for the renewal of its authorities, and proceeds to change them. This, however, is rather a rare occurrence. So far as its rulers are concerned, the people is still more conservative than parliamentary assemblies. Once elected, a State councillor generally remains in office until he resigns voluntarily. Venerable councillors have been known to be re-elected against the desires of the parties which placed them in power. If the Swiss people remunerates its officers far from excessively, at any rate it rarely displays ingratitude towards them. Only as a result of extreme incapacity or negligence are they ever dismissed.

This does not imply that the people lacks any desired means for bringing its officers into harmony with its own opinions. We have seen that, in addition to the periodic re-elections, many cantons have adopted the Recall, both for the Great Council and for the State Council.

I do not pretend an unqualified admiration for

the direct election of the members of the government. There is evidence from more than one canton to prove that the level of governments has not risen since the right of election passed from the Great Council to the people. Parties are often inclined to strengthen their chances in the election by giving preference to candidates who are not the most capable just because they are most popular, and leaving aside those whose independence and energy has brought them many enemies; but I believe that practically no case is known in which a representative of the majority of proved ability has been excluded from a government which he desired to join. The fears which were entertained originally concerning possible conflicts between two authorities—the Great Council and the State Council—required to work together and both dependent on the same electorate have been little confirmed by events. Popular election guarantees the independence of the two authorities, frees the government from parliamentary intrigue and establishes a closer contact between the people and those who direct public affairs.

It is argued that the only result of popular election is to substitute the influence of electoral committees for that of parliament. This is true up to a certain point, but an electoral committee can do nothing against a man who succeeds in winning the confidence of the country. There can be no doubt that popular election imposes upon

members of a government duties which at times are onerous, compelling them, for instance, to attend numerous meetings, banquets and other functions to which considerations of health and personal inclination would not lead them; it has long been a matter of common knowledge that in a democracy, and in other political systems too, the primary condition of a statesman's success is good health, physical and mental vigour, ability to bear severe tests. The public requires much from a man who aspires to public life.

The number of members of the cantonal governments varies from five to nine, and their legal term of office is usually three or four years. These governments are elected by a constituency consisting of the whole canton. Almost everywhere their members do not form part of the Great Council, but attend its meetings in a consultative capacity. The Constitution of Lucerne requires that, in the composition of the State Council, fair representation must be accorded to the minority, which in practice is observed by the election of a State Council composed of five Catholic Conservatives and two Radical-Liberals. In Zug, the State Council of seven members is elected under a system of proportional representation. In Ticino, the State Council of five is elected by a limited vote which gives some representation to the minority. Indeed, in almost all cantons, minorities, or at least the most important of them, are

represented in the government as a result either of success in the electoral campaign or of concessions made by the majority voluntarily and under no constitutional obligation. In Solothurn, if a requisition is supported by 4,000 electors, the question of the recall of the government is submitted to the people. In the Constitution of this canton, one rather strange provision calls for mention: not only the meetings of the Great Council, but also those of the State Council are open to the public. The State Council is required to announce the times of its meetings.

In Grisons, the State Council or Lesser Council is elected for a term of three years. It is the only canton in which it is not possible to grow old in power: the members can only be re-elected twice. In Thurgau, the State Council of five, and likewise the Great Council, can be recalled by the people on the demand of 5,000 citizens. In Bern, where the Executive Council numbers nine members, the Constitution lays down that fair representation shall be granted to the minority. At the present moment, the Bern Council consists of seven Radicals and two Conservatives—seven German-speaking members and two representatives of the French-speaking population of the Jura. According to article 52, of the Constitution of Valais, a canton whose history is a series of often bloody struggles between different districts, executive and administrative power is entrusted to a

State Council of five members, two chosen by the electors of Upper Valais (the German part of the canton), one by Central Valais and two by Lower Valais. The Constitution of the canton of Vaud makes a concession to local claims by prescribing that not more than two members of the State Council may be chosen from citizens domiciled in the same district for a period of one year.

It was natural that attempts should be made to apply to the federal government, the Federal Council, the method of direct election adopted by nearly all the cantons successively. As early as 1848, when the Constitution was drawn up, the system obtained a large number of votes. We have seen above that a proposal initiated in 1900 with the same end in view was rejected by a great majority. It still figures in the program of many parties, and some day, perhaps, its advocates may succeed in getting it incorporated in the Constitution. Every time the action of the Federal Council arouses discontent, the opposition trots it out again as the solution for the future. The out-and-out advocates of centralization raise no objection; not so the federalists. At present, the Federal Council is elected by the National Council and the Council of States sitting jointly as the Federal Assembly, i.e. by the representatives of the people and of the cantons. With direct election a majority of the people would have to suffice, unless recourse was had to highly complicated

systems. The cantonal element would lose all influence upon the election.

But there are additional considerations to be urged. In its choice, the Federal Assembly nearly always tries to take into account not only the personal fitness of the candidates, but also the necessity of assuring the representation of the different regions of Switzerland and the different national tongues. Parties are also borne in mind. At the present time, the Federal Council consists of five Radicals, one Catholic Conservative and one Liberal—four German-speaking members, two French, and one Italian, and, moreover, one of the four German-Swiss members is a native of the part of the canton of Grisons where Romansch, a dialect of Latin origin, is spoken. It is very questionable whether party committees would arrive at an equally satisfactory distribution; and if there were a contest, a vote taken over the whole of the country would be certain to upset all combinations.

In one of his political essays, M. Numa Droz expressed certain views upon the subject, which I do not hesitate to quote at length. Although written in 1893, they apply just as accurately to the situation in 1918:

'From 1848 to 1893, Switzerland has had in all thirty-one federal councillors, of whom seven are still in power. Of the twenty-four who died in office or resigned, fourteen have had to be replaced

in the course of an administrative term; in other words, if the first election in 1848 is excepted, the majority of the members of the Federal Council have entered that body as the result of individual election. Very frequently the choice of the candidate has presented some difficulty; the considerations discussed above (cantons, parties) have had to be taken into account, and not least among them the worth of the candidate. With about one exception, all federal councillors have been chosen from members of the Chambers. Thus they had been observed at work; the ability and character were known and discussed even before the election. The crucial question was much more whether the candidate possessed the qualities of a ruler and administrator than whether he was one of the great leaders of his party. The tribune of the people was not exactly the type preferred; hence the resentment of more than one neglected personality; hence, too, in part, the demand for direct election.

'Consider now an isolated election on a popular basis; is it quite certain that the majority of electors would give due weight to all the considerations which determine the choice of the majority of the Chambers? Is it quite certain in particular that they would respect the proportional principle?

'Under a *legal* system of proportional representation, in all probability not a single candidate

would be elected with an absolute majority. There would be seven federal councillors, two or three representing the Radical party, one or two the Catholic party, one or two the Liberal party, and possibly one the Socialist party. Undoubtedly, for the purpose of avoiding undue complexity in the system of voting, other proportional principles, which in my opinion are far superior to mere party classifications, would have to be abandoned; I refer to the equitable representation of the languages, cantons and different regions of Switzerland. It would no longer be possible to apportion the available talent so that every department of the Federal Council was given a head capable of directing it. The logic of the situation, if not party discipline, would lead every successful candidate to look upon himself, essentially if not solely, as a delegate to the government in support of the electoral program upon which he was appointed. Would such a government ever be capable of inspiring confidence at home or abroad? How could such party puppets pretend to the dignity of the chosen of the nation?

'It is said that Switzerland is a democracy tempered by good sense. 'Every elective system, direct or indirect, which is not decided by an absolute majority, will produce a weak and divided Federal Council.'

The advocates of direct election for the Federal Council base their claim almost exclusively upon

the undisputed principle of the sovereignty of the people opposed to the representative system. M. Numa Droz rejoins :

'Election of the Federal Council by the people is a decisive step in the direction of a unitary system. . . . The implications of a principle cannot be evaded for ever, even if circumstances delay their appearance for a time. The first breach has been made in the federative system by the optional referendum, which does not affect the action of the cantons in the preliminary stages, but does away with it at the crucial point of the final vote. That is not the end of the matter : the initiative has just been extended to the partial revision of the Constitution, and the first use to which it has been put would constitute an act of religious intolerance.

'For the complete realization of its program, direct democracy demands or will demand one after the other, the election of the Federal Council by the people, the compulsory referendum, including the financial referendum, the extension of the initiative to laws, a single Chamber, the election of federal judges, and the election of the president of the Confederation. At the end of the journey there is evidently nothing but the unitary State, not to say dictatorship, the usual culmination of democracy carried to extremes. . . .'

These reflections may seem a little pessimistic. According to my showing, the exercise of popular

rights tends to have a moderating influence in the interests of good sense and public discretion; but it is clear that in federal matters they conflict with the rights of cantons, and tend to undermine the influence of an indispensable balance weight in our federative organization. For this reason federalists must always look very closely upon any proposal to extend them merely in exchange for guarantees which are not always easy to devise.

This chapter would not be complete if I gave no details of the way in which officials are appointed in the various ranks of the cantonal and federal governments. In the Confederation, all officials and employees are appointed by the Federal Council or by the higher officials of the great federal administrative departments. The Federal Court appoints the staff directly dependent upon it. But it is to be noticed that, except in the postal, telegraph and telephone services, the customs and the railways, the federal government has few direct agents, and that a great many federal laws are administered by the cantons. The latter have various methods of appointment. In German Switzerland direct election of officials is widespread. Most of the cantons entrust to the people the election of the prefects, i.e. the local representatives of the government whose business is to see to the execution of the laws. The same applies to the election of registrars and occasionally of notaries, while the employees of the cantonal

administration proper are appointed by the government.

The appointment of the judiciary deserves brief consideration separately. In the course of a lecture at Zürich upon democracy in the administration of justice, Professor Zürcher said: 'Under democracy, judges are appointed directly by the people; authority can only be derived from the sovereign people. The trust of the people is the foundation of the judge's power, and this trust stimulates him to deserve it. The higher courts of the Confederation, it is true, are elected by the representatives of the people, but scarcely a man will be found among them who has not established his reputation either in the lower courts or elsewhere.'

This is, indeed, the practice prevailing in most cantons. While the twenty-four judges of the Federal Court are elected by the Federal Assembly, the members of federal and cantonal juries are chosen by popular election. The majority of cantons have their higher judges elected by the legislature and the others by the people. In nearly all, for example, justices of the peace are appointed directly by the electorate. The case is the same with the presidents and judges of district courts. In this connection, German Switzerland goes much farther than French Switzerland. Eight years ago the canton of Geneva introduced the direct election of all judicial officers, but Neuchâtel still has them elected by the Great

Council, with the exception of justices of the peace. The canton of Vaud has a unique system. There the cantonal Court is elected by the Great Council, and itself appoints all the other judges and judicial functionaries, including the Court officers. In their appointment it usually neglects political considerations, and gives a large place to the minority. The system of Fribourg differs from that of Vaud in that the judges are nominated by a mixed electoral college consisting of the State Council and the cantonal Court.

The results of the election of judges by the peoples are estimated differently. While there exist cantons in which it seems to occasion no disputes there are others in which the elections are fiercely contested. This is the case in the city of Zürich, where the elections of the judiciary give rise to intense struggles between the Socialists and a coalition of the bourgeois parties. More than once, for offices which require the very minimum of legal knowledge, the Socialists have run candidates whose ignorance of the law was complete against highly qualified jurists. If it is true that impartiality is the first quality of a judge, one wonders how much can be left after election campaigns, in the course of which the bitterest party spirit and the strictest party discipline are displayed. The last judicial elections in the city of Bern have presented the far from edifying spectacle of a chief justice who had discharged his functions irreproachably, ousted by a

Socialist majority with no consideration for merit or services rendered. Perhaps these disadvantages will diminish when the new parties obtain the share in the judiciary to which they lay claim; but it is not certain. In Geneva, where, as I have stated, the appointment of judges of all ranks has passed to the people, a group of candidates drawn from all parties was returned without opposition at the general election of 1918. At the outside one-quarter of the electorate took part in the vote.

IX

DEMOCRACY IN THE COMMUNES AND THE CHURCHES

THE choosing of the members of the government, the higher officials and the judiciary does not exhaust the rights of electors in the cantons. There must be added the elections in the communes and the Churches. The history of democracy in these two institutions might furnish material for a lengthy and interesting chapter, but I can only touch upon it and indicate a few of the more prominent features.

We have seen how Swiss liberty was derived from the liberty enjoyed by the medieval Germanic communes. Communal privileges have almost disappeared in Germany, but they persist in Switzerland, especially in German Switzerland, where, in spite of the close supervision of the State, the commune still enjoys a wide measure of autonomy. In the greater part of French Switzerland, the commune, springing from a different conception, is much more restricted in its freedom of action. It is rather an administrative unit bound by regulations imposed by the State and restricted to functions conferred upon it by

the State. In many communes of French Switzerland, the general assembly of electors has fulfilled its part when it has elected the communal or municipal Council; but in the majority of the communes of German Switzerland, it has retained very important powers and remains the focus of communal life. In many cantons, it differentiates into separate assemblies, each appointing a council according as it deals with general administrative business, matters concerning only enfranchised citizens, educational or ecclesiastical affairs. The importance of the Swiss communes springs also from the fact that almost everywhere the acquisition of burgess rights in a commune is an essential condition of naturalization. To be a Swiss citizen, a man must first be a burgess of a commune and a citizen of a canton.

In German Switzerland, the administrative authorities of the commune are usually appointed by the general assembly of electors. This is primarily the case with the executive council of the commune, which is termed, according to the canton, town Council, communal Council, municipal or administrative Council. It also applies to elementary and secondary teachers. Article 47 of the Constitution of the canton of Zürich lays down that the commune is normally to be divided into a political commune, an ecclesiastical commune and an educational commune, each with its general assembly of electors and its council. All citizens

dwelling in the commune have the right of voting in the communal assembly, but upon questions concerning the relief of the poor, the grant of citizenship and the administration of property belonging to the burgesses, the right of voting is restricted to the latter, provided they are resident in the canton. Communal property, unless belonging specially to the burgesses, must be employed in the first instance for public purposes. As it would be very difficult to hold a general assembly of electors in communes of more than 10,000 inhabitants, the law authorizes a special organization for the latter. For the large towns of the canton, a communal Great Council, the referendum, the initiative and election by secret ballot take the place of the general assembly of electors. Notaries are elected by the electors of the district in which they practise. Besides the communal educational authorities, there are district educational authorities, also elected by the people. Teachers in State schools are elected by the general assembly and are subject to re-election every six years.

In Lucerne, the right of electing their teachers is guaranteed to the communes by Article 3 of the Constitution. Article 88 states that every political commune has a communal assembly and a municipal Council. All communal officials are elected by the communal assembly. Besides the commune of inhabitants, the political commune, there are also the commune of burgesses, the eccles-

iastical commune (parish) and the communes or corporations, as they are called, administering special property. Voting is by show of hands or secret ballot. A number of German-speaking cantons possess similar institutions. The different species of communes have the right of imposing taxes according to their requirements.

In the canton of Bern, the important affairs of the commune are submitted to the assembly of communal electors; the holding of the assembly can be replaced, and is replaced particularly in the larger localities, by the ballot upon either all the affairs or a selection of them. Populous communes can have a General Council to determine in advance which matters shall go before the assembly and even to dispose of certain matters finally. But, in general, upon any important question which arises, the last word rests with the assembly of electors. There is no right of referendum upon decisions reached by the General Council or the communal Council upon matters within their sovereign competence, and initiatives, which must be supported by one-tenth at least of the electorate, may only refer to subjects which come within the competence of the general assembly.

In Basel-Stadt, canton and commune have a single administration. In Grisons, as in Zürich, we find district administrations (*administrations de cercle*), intermediate between the canton and the

commune, elected by the people, discharging certain political and administrative functions and invested with the right of levying taxes. Valais possesses the institution known as the District Council, composed of delegates from the communes and presided over by the prefect. The Constitution of this canton provides for each commune a primary assembly, consisting of all citizens qualified to vote according to the Federal Constitution, a communal Council (*municipalité*) and an assembly of burgesses. The primary assembly may appoint, in addition to the communal Council, a general Council with wider powers whose functions are determined by law. In the French-speaking cantons, the separation of political and educational communes is unknown. The commune of inhabitants forms a unit which, in the cantons of Neuchâtel, Vaud, and Geneva, administers also the property of the burgesses, so carefully separated from other matters in the German-Swiss cantons. By a provision which we meet again in the Constitution of Ausserrhoden, the Constitution of Vaud forbids communes which impose taxes or whose accounts commonly show a balance on the wrong side to distribute the revenue from communal property in any form or under any pretext whatever. The income from burgess property must before everything be used to meet the liabilities of the communes.

In many French-speaking cantons, the executive

authority of the commune is elected, not by the people, but by the communal Council. Neuchâtel permits a general assembly of the commune where the population does not reach the minimum figure prescribed by law. In the canton of Vaud, the system is as follows: in every commune with a population not exceeding 800 souls, there is a General Council comprising all the electors of the commune, and in the others a communal Council of at least 45 and not more than 100 members appointed for four years. The General Council in small communes and the communal Council in the others nominates the governing body and the latter appoints all other officials. Thus in small communes the system is democratic, and in large communes representative. In imitation of the organization prevailing in the large communes of German Switzerland, the canton of Geneva has introduced the referendum upon communal matters, but only in the optional form. The decisions of communal Councils, or municipal Councils as they are called in Geneva, are submitted for the approval of the electors of the commune when a demand to that effect is supported by 1,200 electors for the town of Geneva, by one-fifth of the electors for the three suburban communes and the town of Carouge and by one-third for other communes. In Neuchâtel, the law upon communes makes provision for both the initiative and the referendum upon questions of taxation, financial engagements and

important matters, when the demand is presented by a number of electors equivalent to five per cent. of the total population of the commune.

To the above outline of the organization of communes in the Swiss cantons, I shall add some particulars of the organization of the Church, with which, as we have seen, it is rather intimately associated in many cantons. From what I have said about the cantons possessing a Landsgemeinde, it will have been gathered already that the electors of the small Catholic cantons have retained in ecclesiastical matters rights of some importance. The present tendency of the Catholic Church is to restrict as much as possible the electoral rights of parishes over their spiritual pastors, but where such traditional rights exist, they are defended tenaciously by those who enjoy them.

A distinction must, of course, be made here between established Protestant Churches and the Roman Catholic Church. In all the cantons where exists a Protestant Church wholly or partially maintained by the State, the parishes elect their pastors or at least present them for appointment to the government of the canton. With the Catholic Church, the mode of procedure is not uniform. In some cantons, the election of priests by the people was imposed by the State and accepted by the Church after prolonged resistance, which reduced the election in reality to a mere form. In others, the election is a secular right, recognized by the

ecclesiastical authorities. In other places, the bishop of the diocese presents and the government appoints the priest presented. Elsewhere again, the bishop enjoys the right of appointment exclusively.

The Confederation does not interfere in Church affairs except to enforce the rights of the State asserted in the Federal Constitution, where the proclamation of liberty of conscience and of worship, the prohibition of new monastic foundations and of the creation of new bishoprics save with the consent of the federal authorities, provisions relating to the marriage law, the civil status of the clergy and burials, and the exclusion of the Society of Jesus recall the fierce religious contests of past ages. As for the cantons, although there is nowhere a State Church, there are many appreciable variations in the connection of Church and State. A professor of the University of Fribourg, M. Lampert, classifies the cantons as follows: cantons which compel religious bodies to be self-supporting, viz. Uri, Schwyz, Obwalden, Nidwalden, Zug, Appenzell-A.-R. and Appenzell-I.-R., Valais, Glarus, Grisons, St. Gall, Thurgau; cantons which lend aid to the Church on the basis of special rights, viz. Lucerne, Ticino, Aargau, Vaud, Solothurn; cantons which have a national Church maintained by the State, viz. Bern, Schaffhausen, Basel-Land; cantons which contribute equally to both confessions, viz. Fribourg. To this list must be added

the two cantons which did away with their financial assistance to religious bodies a few years ago, viz. Basel-Stadt and Geneva. But this classification may be disputed. The special rights of which the Fribourg professor speaks do not find a place in all the Constitutions and, particularly in the canton of Vaud, are historical rather than legal in character. In Neuchâtel, on the other hand, a certain endowment is guaranteed to the Church in the event of disestablishment, and in Fribourg most parishes subsist on their own revenue.

The Constitution of Zürich lays down in Article 23 that the evangelical National Church and other ecclesiastical corporations administer their own affairs subject to the supervision of the State. The organization of the National Church is regulated by law, which, however, ensures complete freedom of conscience. In general, the State meets the expenditure for religious purposes. The parishes elect their ministers, and those of Churches which receive financial support from the State must offer themselves for re-election every six years, a provision which applies also to Catholic parishes. The Constitution of the canton of Zug prescribes in Article 72 that ecclesiastical general assemblies (comprising all Catholic electors) are empowered to elect priests and parish Councils. The parish (Kirchgemeinde) has the right to vote taxes when the income from its property does not suffice to cover the expenditure on religious objects.

Solothurn, a canton which is three parts Catholic but the Constitution of which was drawn up by a Radical majority, includes, by Article 20, among the electoral rights of the people that of the appointment of clergy (parish priests, curates, ministers, etc.) by the members of their sect. In Basel-Stadt, the State maintenance of religion has been abolished, but churches which submit to supervision as determined by the cantonal law and have a democratic organization, are recognized as constitutional corporations and authorized to raise taxes; this, however, is not the case with the Roman Catholic community of Basel. In Schaffhausen, ecclesiastical constitutional corporations have their independent organization, which must be approved by the State, and ministers are elected by the congregations from candidates who have passed the State examination. In the 'mixed' canton of St. Gall, the ecclesiastical authorities of both faiths administer their own purely religious or ecclesiastical affairs. The organization which they adopt must be sanctioned by the Great Council. In Grisons, both national Churches, Protestant and Catholic, are recognized by the State. The Constitution confers upon parishes the right of electing their clergy.

The 'mixed' canton of Aargau empowers parishes to collect taxes from their church-members. The parishes elect their ministers or priests out of a list of clergy declared eligible by

the State. Synods consisting of laymen and clergy administer the affairs of the Church under the supervision of the State. The latter takes any steps necessary to prevent encroachment by the Church. In the great canton of Bern, where the Catholic Jura has been the scene of acute religious conflicts, Article 84 of the Constitution recognizes the Reformed Evangelical, the Roman Catholic and the Christian Catholic (Old Catholics) as national Churches in the parishes belonging to those faiths. Parishes have the right of electing their clergy, but the Roman Catholics elect the candidates chosen by the hierarchy. Taxes to meet religious expenditure are paid by the adherents of each faith.

The canton of Fribourg, which includes a Protestant district, that of Morat, proclaims in Article 2 of its Constitution that the Roman Catholic Apostolic religion is that of the majority of the people, and guarantees its free exercise and also that of the reformed evangelical religion. The relations between the State and the Catholic Church in matters concerning both, which have given or might give rise to conflicts, are determined by a concordat between the two authorities. The powers of the ecclesiastical authorities in the Protestant part of the canton are regulated by law. The State exercises a general supervision over public education which is organized and directed in a religious and patriotic spirit.

Effective co-operation in this matter is assured to the clergy. Expenditure by the cantonal exchequer upon religious and educational objects in excess of existing foundations, is to be apportioned equitably between the two confessions. In Valais, the Great Council has hitherto elected the bishop of the diocese in virtue of a traditional right. Rome formally annuls the election, but appoints the candidate elected by the Great Council upon presentation by the Chapter.

In Neuchâtel, the Constitution declares that the law can never recognize or establish independent, sovereign corporations and that any change in the fundamental basis of the present ecclesiastical organization shall be submitted to the people for ratification. The case occurred a few years ago when a large majority of the people refused to abolish the State's support of religion. The Constitution of Vaud gives protection to the national evangelical Church throughout the canton and also to the Catholic religion as practised up to the present in the 'mixed' district of Echallens. The clergy of this district, in common with the rest, are paid by the State. Protestant pastors are presented by the parishes and appointed by the State. Parish priests are presented by the Roman Catholic bishop of the diocese.

I do not think that this brief summary of the ecclesiastical institutions of Switzerland is out of place in a general survey of the democratic life

of the country. Its diversity presents a striking contrast with the unity of the ecclesiastical organization in neighbouring great States.

After this account of the rights of the Swiss elector in the Confederation, cantons, communes and Churches, some idea may be gathered of the meaning of direct democracy in the cantons where it has reached its highest development. In the towns of Bern and Zürich, for instance, the elector is summoned to the polling booth to elect deputies in the Federal Chambers, federal and cantonal lawmen, deputies to the Great Council, the members of the government, district judicial authorities, prefects, registrars, teachers and communal, educational and other authorities; he votes upon constitutional proposals and federal laws and decrees placed before him by means of the referendum and the initiative; he votes twice a year, sometimes oftener, upon constitutional changes, laws and other matters within the scope of the compulsory cantonal referendum and the initiative; he votes upon proposals originating in the Council of the commune; if he joins a Church, he elects its clergy; if he is a member of the body of burgesses, he elects the Council of burgesses. Add to this the fact that in many cantons voting is compulsory, and an idea will be gained of what the status of full citizenship involves for the conscientious voter who wishes to take upon himself the study, at least in a general

way, of the proposals submitted to him or to merit the praise which Montesquieu gave to the people for being admirable in the choice of those to whom it entrusts a portion of its authority. Nor must the time be forgotten which the elector spends in listening to lectures and speeches by the orators of his party; then, again, one must take into account all the minute and interminable detail of preparatory electoral work, conferences and committees, action in the Press . . . and it will be agreed that it is no sinecure to play the least active political part in the small Swiss democracies. From time to time, certain signs of weariness are noticeable, but on the whole Swiss doctors seem hitherto not to have had many cases of neurasthenia due to electoral overstrain. Nevertheless, mention should be made of the small proportion of voters, in the cantons where voting is not compulsory, when the proposals or the candidates at an election arouse but little opposition.

X

COMPULSORY VOTING AND WOMAN SUFFRAGE

I HAVE referred almost invariably to the rights of the people in Switzerland. This is not a very exact expression. One should speak rather of the rights of the electorate, which does not include women, young men under twenty years of age, foreigners, or bankrupts, at least in many cantons. According to the last census, the population of Switzerland is upwards of 3,885,500; but the number of electors is about 900,000. Among those who do not vote are many who wish to vote but cannot; but there are also some who have the vote but do not care to use it. In order to compel the latter class to record their vote, many cantons have instituted compulsory voting.

The idea is not modern. The great philosopher, Plato, advocated it in the *Laws*, but, aristocrat as he was, he desired to restrict compulsory voting to the upper classes, so that they might enjoy the influence to which, according to him, their culture and deserts entitled them. He regarded the vote, not as a personal right, but as a civic duty, and

many great thinkers and learned jurists of our own time adopt his view. The question is whether the right of voting is a mere individual right, which the citizen is at liberty to use as he thinks fit, or whether it is a social function performed for the benefit of the community, in which case compulsion is entirely justified. To me it is clear that the vote is a function and that abstention by electors, whether from apathy or any other cause, is incompatible with a healthy democracy; but I shall be told that the vote of an elector cast under compulsion is practically valueless, which is irrefutably true. On the other hand, compulsory voting has an unquestionable educational value. It forces the elector to reflect upon the questions presented to him and gives him a vivid realization of one of the most important civic duties.

Hitherto, compulsory voting has not penetrated into French-speaking Switzerland. Neuchâtel has recorded it in its Constitution without attaching any sanction to it, which amounts to as much as if it had been omitted entirely. Attempts to introduce it in the canton of Vaud have failed in the Great Council. On the other hand, compulsory voting is in operation in a number of cantons in German Switzerland. In Ausserrhoden, as we have seen, whoever does not attend the Landsgemeinde is mulcted in a fine of 10 francs. The results of compulsory voting are best seen in

the cantons of Aargau, St. Gall, Solothurn, Thurgau, Schaffhausen and Zürich. The electorates of Basel-Stadt and Grisons have refused to adopt it quite recently. In the canton of Zürich, it exists in an attenuated form: every elector is required to return the envelope which serves for purposes of identification, either empty or with the voting paper enclosed, within an interval of two days, in default of which the envelope is collected from the house, together with a penalty of one franc at most, by an agent of the local authority. In Schaffhausen, defaulters are punished by a fine of one franc; in St. Gall the fine is two francs, in Aargau from one to four francs, and in Thurgau two francs.

The fine is the simplest and most convenient method, but it is argued that injustice is involved if it is the same for all, without reference to the character of the fault committed. Opponents of the fine contend that any monetary sanction is degrading to the civic duty, and that a better procedure would be to give publicity to the list of those who failed to vote without good excuse, punish them by placarding their names, and upon repetition of the offence, deprive them of the vote, temporarily or permanently, and then disqualify them from public office.

Compulsory voting is one of the subjects upon which there is least agreement among parties. Each of them is afraid of its results in practice,

and as the theorists are divided, the problem remains undecided in some of the cantons.

One method of increasing the proportion of voters would be to institute woman suffrage. In all probability, men would vote more zealously under fear of being out-voted by the feminine element. But this solution has found little favour and the supporters of woman suffrage have to admi that the progressive tendencies of Swiss legislators do not carry them in this direction. Everyone recognizes the admirable qualities of the Swiss woman. She is usually hard-working thrifty and trustworthy, and the history of Switzerland from the earliest days of independence onwards records noteworthy instances of feminine heroism; but the general opinion still seems to be that the problem of the division of labour between men and women is more satisfactorily solved by the restriction of civic duties to men than by the entry of women into the stormy sphere of politics. Guizot used to say that politics was not a business for saints. Feminists urge that woman would exercise a purifying influence upon politics, while anti-feminists believe that she would sacrifice something of her dignity and her indefinable charm. The successes of woman suffrage in Switzerland have been extremely modest. Some years ago, the canton of Vaud granted to women the right of participating in the election of clergy and of parish Councils. In 1916, Neuchâtel followed the same

example. Geneva has done likewise. But nowhere have women obtained the political franchise proper. The extension of the vote to women meets with resistance particularly in rural and Catholic cantons. If Switzerland follows the movement in favour of woman suffrage which has become apparent in certain countries since the war, it will doubtless be by slow degrees. The day when the women of Switzerland will take part in the election of the National Council still seems far off.

On the other hand, there is a tendency to give some place to women in the government of schools. The canton of Vaud has made women eligible for education committees, and the instance is not isolated. It should be added that the new Swiss Civil Code has brought about a considerable improvement in the social position of women, which is hardly comparable with what it was fifty years ago. The age has passed away when Shakespeare could end *The Taming of the Shrew* by putting into Katherina's mouth the words :

> Thy husband is thy lord, thy life, thy keeper,
> Thy head, thy sovereign ; one that cares for thee
> And for thy maintenance commits his body
> To painful labour both by sea and land,
> To watch the night in storms, the day in cold,
> Whilst thou liest warm at home, secure and safe ;
> And craves no other tribute at thy hands
> But love, fair looks, and true obedience ;
> Too little payment for so great a debt.
> Such duty as the subject owes the prince,

Even such a woman oweth to her husband. . .
I am ashamed that women are so simple
To offer war where they should kneel for peace,
Or seek for rule, supremacy, and sway,
When they are bound to serve, love, and obey.

Modern life makes greater demands upon women than did life in the age of the poet who is reputed to have plumbed the uttermost depths of human nature.

XI

PROPORTIONAL REPRESENTATION

IF woman suffrage has hitherto obtained little success in Switzerland, the same cannot be said of the much discussed electoral system of proportional representation. Although proportional representation was first advocated outside Switzerland and the earliest experiments with it were conducted elsewhere, in no other country has it been more widely canvassed or played so large a part in the political controversies of the last quarter of a century. For over forty years it has been a burning question, and its advocates have carried on a persistent propaganda to translate it from theory to practice. The Basel physicist Hagenbach-Bischoff in German Switzerland, and the philosopher Ernest Naville in French Switzerland, were its great apostles who contributed the improvements in the system or rather systems—for they are many—which permitted its adoption. Although I believe in the representation of minorities in legislative bodies, I am not a supporter of proportional representation. I recognize that it has certain advantages, but they seem to me to be outweighed

by the disadvantages. I have not yet been persuaded that it is a triumph of democracy, and I am not surprised that M. Clemenceau describes it as the negation of universal suffrage. Having said so much, I am obliged to describe the continual progress which it makes in Switzerland, together with the fact that its successes follow more or less closely upon extensions of popular rights. Minorities use it to safeguard their rights, and almost always include it among the items of their program.

The objections, however, which may be brought against proportional representation are very weighty, and in Switzerland as in France have been advanced in the most authoritative quarters. Its supporters look upon it above all as an application of justice to electoral matters. A French philosopher, whose works are permeated with the idea of justice, M. Renouvier, has nevertheless opposed proportional representation in his excellent work on Ethics. 'Doubtless, public men who are concerned for the representation of minorities, have good reasons for holding that opinions, whether in a minority or not, should be represented. There are equally good arguments for the position which I take up. In general, it must be admitted that every opinion engendered in the free play of social intercourse or otherwise, upon reaching a certain degree of plausibility, can obtain publicity through the advocacy of an individual who receives a

legislative mandate from other individuals; and if this is not the case, it seems desirable that an opinion should be subjected to the preliminary process of preparation and discussion instead of entering, as it were, in its own right, into an assembly in which it will cause added confusion without any corresponding advantage. The right of representation belongs, like every other right, to persons and not to ideas, and no idea which lacks the strength to survive the test of the representation of persons is entitled to aspire to any social function. It must in that case be satisfied with the ordinary channels for the propagation of ideas.'

To the question, what would happen if the proportional principle were rigidly applied, M. Renouvier rejoins: 'Opinions, special interests, exclusive proposals, progressive and reactionary schools of thought, would all organize groups of electors of the required number and often succeed in electing their candidates. Elections would attain a remarkable degree of sincerity. But the result would be an anarchical assembly, which would not reflect the average of opinions and desires, and which, through its consequent inability to perform its legislative function, would soon give place to some form of usurped authority. Instead of the representation of the common weal of the inhabitants as individuals, it would amount in effect to an excitement and accentration of every

separatist tendency, to the assembly in a single body of the most irreconcilable fractions, charged with the task of reconciling all the rest. . . .'

Renouvier speaks as a philosopher. Let us now examine the view of a politician who has played no mean part in Swiss affairs, and whom I have already had occasion to quote. Numa Droz, a former president of the Confederation, wrote :

'The idea which should govern the whole question is that the deputy is before all the representative of his constituency in its entirety; in some quarters this idea is not recognized with sufficient clearness, with the consequence that the spirit of tolerance and justice is still so conspicuous by its absence in parliamentary assemblies. To speak frankly, parties exist, and always will exist with their passions and prejudices. That is inevitable, but in my opinion precautions should be taken not to give them a legal or constitutional standing; both electors and elected should, on the contrary, be persuaded that their social function is to work for the good of the nation as a whole, and not merely for selfish party triumphs.

'There are some who cherish the idea of forming a parliament of all kinds of minorities, which would render the formation of a governmental majority almost impossible. Personally, I am convinced that the first essential for a people is to know whither it is going. . . . M. Alfred Fouillée, a writer whom no one will accuse of

authoritarianism, well says: 'A parliament is not a mere consultative Council, a sort of academy, in which a hearing is given to all opinions out of platonic affection for truth; on the contrary, all its proceedings have to do with action and lead up to execution.' Now excessive multiplication of parties results in neither action nor execution, but in negation. The Swiss people would find it a most disgusting spectacle to see the parties in the Federal Assembly reduce one another to powerlessness through their internecine strife. . . .'

To these considerations may be added the observation of M. Esmein in his *Eléments de droit constitutionnel*: 'While in the nineteenth century events tended to make the deputy the representative of the whole nation and to do away with the imperative mandate, "proportional" representation is a step in the opposite direction. It reduces the mandate to a party mandate and tends in fact to reintroduce the imperative mandate.'

There is justice in the observation. Such a mathematically exact representation of parties, even of the most ridiculous and most detestable, would render meaningless Article 23 of the Constitution of Bern, which asserts that the members of the Great Council are the representatives of the whole people and not of the wards which elect them.

The advance of proportional representation in Switzerland is primarily due to the growth of the

Socialist party, and the divisions which have occurred in the older parties. So long as there were only two main parties, the idea made scarcely any headway. The occasions were very infrequent when a minority was not more or less adequately represented. Its ambition was not to obtain a few additional representatives, but to transform itself into a majority. Since, in some cantons, three, four and even five parties have come into being, points of view have changed: Minorities now make it their chief aim to be represented proportionally and to throw their whole weight into the parliamentary balance, and do not hesitate to form the most startling coalitions to achieve their purpose.

The first triumph of proportional representation in Switzerland is an interesting story. It occurred in 1891 in the canton of Ticino. In the preceding year, the Catholic Conservative administration in this canton had been overthrown by a revolution, in the course of which one of the members of the government was killed. The Liberal party complained bitterly that the administration of justice provided no security for the opposition in matters nearly or remotely connected with politics. It raised a great outcry against a redistribution of seats which reduced it to a small minority in the Great Council, while it believed it had the majority of the people with it. The tension between the parties was extreme. At this point, the Federal Councillor, Louis Ruchonnet, brought his

powerful influence to bear to induce the parties to adopt proportional voting and so to put an end to the conflicts continually provoked by the arbitrary redistribution of seats. Louis Ruchonnet, with whom I have discussed the matter more than once, did not believe in the principle of proportional representation; he looked upon it as a useful remedy for desperate ills in the body politic. Therein he did not err. Although the introduction of proportional representation in Ticino met with much criticism and the distribution of seats has had to be altered several times, the advocates of the system credit it with the cessation of the revolutionary outbreaks and the acute conflicts of which this canton used to be the scene—a result, however, which others attribute to the extension of popular rights carried out by the new Constitution.

A number of cantons followed the example of Ticino and adopted P.R. for the election of the Great Council. This was the case in Neuchâtel in 1891 and in Geneva in 1892. Then followed in succession Zug (1894), Solothurn (1895), Schwyz (1906), Lucerne (1909), St. Gall (1911), and Zürich (1917). In the cantons of Bern and Fribourg, communes may adopt P.R., if they choose, for the election of communal Councils. The state of the question in the Confederation has been dealt with in the chapter on the initiative.

Extolled originally by the Liberal party especially, proportional representation has become in Switzer-

land the great cry of the Socialists. They have obtained the greatest advantage from it, and it figures in the forefront of their party program. The Socialists see in it the quickest means of coming into power. The Conservative party, particularly in German Switzerland, numbers many adherents of the system. The main concern of this party is to secure its maximum representative strength by assuring representation for the Catholic minorities scattered about the constituencies of Protestant cantons.

It is not easy to form a final judgement upon the results of proportional representation in the cantons where it has already been in force for some years. In Ticino, although parties are now represented proportionally, local divisions are not. The strict application of the system necessitates large constituencies in which country candidates have less chance of election than those of the towns, whose reputation is generally better known. One of the parties in Ticino has devised the plan of making its candidates sign an undated letter of resignation which is forwarded to the president of the Great Council by the electoral committee in the middle of the legislature's legal term in order to enable the candidates who were not elected to sit in their turn during the latter half of the period. In the canton of Geneva, where the majority formerly alternated between Radicals and Liberals, and in Neuchâtel and Solothurn, where the

Radicals used to enjoy a majority, no one party can now obtain a majority; coalitions of groups form a majority according to the circumstances of the moment or according to agreements which are more or less strictly observed. Similar results are to be seen in Basel-Stadt and in the canton of St. Gall. In Zürich, P.R. has favoured the rise of an agrarian party at the expense of the Radicals and Democrats. In Basel, it has resulted in a considerable lengthening of parliamentary debates. This effect was foreseen by M. Alfred Fouillée when he said that proportional representation would turn representative assemblies into academies. But there are academies and academies. The speechifying in the Basel Council wearied the patience of the public to such an extent that the sovereign people only rejected by a few votes an initiative which would have effected a considerable reduction in the number of representatives.

In general, it may be said that proportional representation has made the task of governments more difficult by depriving them of the support of a solid and stable majority. It compels them to be continually negotiating with parties, a troublesome business, indeed, but less so here than elsewhere, thanks to popular rights and the fixed duration of ministerial office. In spite of these various defects, supporters of P.R. maintain that the experiment has been a success, that the con-

ception of justice has received full satisfaction and that the practical difficulties so often emphasized by its opponents have been easily overcome. The future alone can decide whether the proportional system is destined to last or whether it merely corresponds with the present dividedness of the historical parties. For the moment it still passes from success to success. The only check which it has met with in Switzerland was the substitution of a system of limited voting instead of proportional voting in the election of the State Council of Ticino.

XII

DEMOCRACY IN THE ARMY AND THE MAINTENANCE OF NEUTRALITY

'THE military organization of the Confederation is perhaps the most original, the most ingenious, the most useful and the most beneficent of Swiss institutions,' wrote M. Albert Bonnard, that remarkable publicist whose recent death was such a loss to Swiss journalism. The army, too, is democratic, constituting as it does under a system of compulsory service not a standing army but a militia force simply and solely for defensive purposes, the maintenance of neutrality and independence. In Switzerland every able-bodied man is liable to military service, but hitherto the term of service has been very short: the military law of 1906 instituted a period of training of 65 days for infantry recruits and rather more for other arms with a further course of 11 days a year for ten consecutive years. After 12 years' service with the colours, the soldier passes into the Landwehr. From 41 to 48 years of age, he serves in the Landsturm. The system of training is uniform and controlled by the Con-

federations; the administration is generally conducted by the cantons.

The continuous mobilization necessitated by the war increased the military burden enormously. Divisions of the line were mobilized for 3, 4, 5 and even 6 months in the year. Frequent calls were made upon both Landwehr and Landsturm. The tax upon citizens unfit for service was doubled. But, in normal times, the military burden borne by Swiss citizens is not particularly heavy, and the great Socialist orator, Jaurès, was well justified in devoting a whole book to commending the Swiss Army to those of his own political faith as the model of a democratic army. By a strange contrast, the majority of militant Swiss Socialists, as indicated at any rate in recent party congresses, does all it can to destroy the very basis of the army and adheres more and more to uncompromising anti-militarism. Societies of young Socialists preach the refusal of service and do their utmost to undermine discipline and shake the men's confidence in their leaders. Fortunately these strange tactics are the work of but a small minority of the Swiss people. The nation as a whole remains patriotic, appreciating that Swiss independence is inseparably bound up with the maintenance of the army.

Switzerland's repudiation of any kind of aggressive policy might be expected to rally all citizens without exception to the principle of national

defence; but revolutionary circles see even in the militia army as organized in Switzerland an obstacle to the accomplishment of their designs and a weapon in the power of capitalism. Switzerland's situation in the midst of the great European Powers, occupying with the fastnesses of the Alps and the passes over them a strategic position of the greatest importance, exposes her to especial danger whenever Europe is ablaze; this fact is patent to the most thoughtless, and it demands extraordinary ingenuousness, particularly after Belgium's terrible fate, to imagine that mere treaty guarantees of neutrality are sufficient protection. Neutrality depends directly upon the measure of defence undertaken to support it.

The principle of neutrality is the basis of Swiss policy. It is absolutely beyond dispute, but Switzerland and the Powers do not always see eye to eye upon its scope and interpretation. It is 103 years ago since the Congress of Paris, confirming the declarations of the Congress of Vienna, gave formal and authentic recognition to the neutrality which Switzerland had observed for several centuries. The signatory Powers, in the declaration of Vienna of the 20th March, guaranteed the integrity and inviolability of Swiss territory and affirmed that 'the neutrality and inviolability of Switzerland are in the true interests of the whole of Europe.'

Upon this declaration the Federal Council took its stand on the 4th August 1914, when it informed the belligerent States that 'the Confederation, inspired by its venerable traditions, firmly intends to depart in no wise from the principle of neutrality, so dear to the Swiss people, which is in harmony with its hopes, its aspirations, its internal organization and its position in relation to other States, and which the signatory Powers of the treaties of 1815 formally recognized.' The declaration of the Federal Council emphasizes the fact that while Swiss neutrality is recognized by the Powers, it is nevertheless voluntary. Switzerland retains the right to renounce it, not only from the moment her neutrality is violated, but whenever her independence, her sovereignty or her vital interests are jeopardized.

Swiss neutrality may be endangered not only by foreign armies, but also by the economic policy of the surrounding countries. Without declaring war, these countries may destroy or restrict the foreign commerce of Switzerland, paralyse her industries, and reduce her to famine. They may send their agents into the country, foment disaffection, and exert formidable pressure upon public opinion to render it compliant with their interests. Hence the protection of Swiss neutrality involves a host of different measures which must be applied without hesitation and continually adapted to the needs of the moment. For this reason, on the

3rd August 1914, the Federal Assembly conferred plenary powers upon the Federal Council—'unlimited power to take all measures necessary for the security, integrity and neutrality of Switzerland, the protection of public credit and of the economic interests of the country, in particular of the food supplies.' The mass of the measures taken by the Federal Council in some hundreds of decrees of every kind forms what is called 'the measures of neutrality.' Restrictions have had to be placed upon commerce and industry. Monopolies of food have been established. Conventions subjecting imports and the distribution of imports to stringent regulations have been concluded with both groups of belligerents. Cultivation has been developed under governmental control. Practically all commerce has been placed under the supervision of the federal Department of Public Economy. The exportation of agricultural produce has been limited. The rationing of food has been introduced as in a beleaguered city. Transport rates have been raised. Measures have been taken for the prevention and alleviation of unemployment. Moratoria have been declared. Ordinances have been issued for the suppression of spying. There would be no end to a list of all that the country has done to adapt itself to the abnormal situation and fresh needs created by the state of war between the nations which encircle its territory on every side. To all the rest should be added the

extensive powers which military law confers upon the commander of the army when troops are mobilized for active service.

If the war had been of short duration, the inconveniences of this state of affairs would not have been serious. But when it lasted four years, matters assumed a very different aspect. The plenary powers of the Federal Council supplanted the Federal Assembly, leaving it scarcely a formal control; they suppressed preliminary discussions in the Chambers; they suspended the right of referendum upon decrees passed by the Federal Council which in normal times would have come within the competence of the Chambers. Ultimately, as a result of this process, they created a deep-seated discontent, especially in French-speaking Switzerland, and called forth lively protests. Despite its inherent defects, particularly in a democratic country, such procedure was none the less an ineluctable necessity. The only matter for regret is that the Federal Chambers did not bethink themselves of having the plenary powers ratified from the beginning by submitting to the people an addition to the Constitution empowering the Federal Council to take the steps it did. The final and formal authorization of the sovereign people, instead of the emergency legislation, would have silenced much criticism and opposition, and rendered the temporary suspension of democratic institutions far more acceptable

The neutrality which has aroused most objections is that which is more or less accurately termed moral neutrality. At the outset of the war, the Federal Council took the view that every Swiss citizen should abstain, especially in the Press, from any expression of sympathy and, still more, of antipathy towards either of the belligerents, and a confidential circular was sent to the Press requesting it to conform with this rule. A recommendation of this kind might be justified from the point of view of political expediency and of the desire of the government to avoid journalistic excesses which might involve it in serious difficulties. As for neutrality properly so-called, the best jurists have always recognized that it can only be compromised by the acts of the government and that the Press retains the right to express its judgements and its sympathies upon the issues between the belligerents. The question is obviously one of degree. In face of the terrible conflict of peoples which had broken out, it was to be feared that Switzerland, standing between the two great alliances and bound to both by ethnic and other ties, would be swept with opposing demonstrations of an extreme character. The result could only be an unfortunate tension for the public and serious difficulties for the government, which was compelled by the economic needs of the country to carry on continuous negotiations with the two coalitions

engaged in combat on a gigantic and unprecedented scale. The influence of these considerations inspired, three months later, an appeal to the Swiss people by the Federal Council, dated the 1st October 1914, which ran :

'We firmly intend to maintain our neutrality by all the means at the disposal of our country. This attitude has so far spared us the horrors of war, but it also demands from us duties and sacrifices. But those duties and sacrifices are not clearly recognized everywhere. In our manner of passing judgement upon events and in the expression of our sympathies for the various nations, we must observe the greatest reserve, avoid anything which might injure the peoples and governments engaged in the war and be on our guard against partiality. To judge events with discretion and moderation by no means implies the renunciation of sympathy and feeling; the heart of each citizen will continue to beat warmly for those to whom he is attached by especially intimate bonds or whose fate is dear to him. . . .

'But still more important than the respect due to foreign nations, and vital to the interests of our country, is the maintenance among ourselves of a vigorous and unshakable unity. This unity, which is absolutely essential now when our culture and the economic and financial position of our country are so gravely menaced, will be equally essential

in the future when unity of effort will still be required for the repair of these injuries. History teaches us that Switzerland has never undergone greater disasters or suffered greater losses than when, torn by internal strife, she was enfeebled by lack of unity. 'At this moment, when the fate of peoples hangs in the balance, let us recall these lessons of history, and let us take care, when insisting imprudently, passionately or spitefully upon differences among ourselves, not to weaken the sentiments which unite us, but rather to strengthen them by emphasizing patriotically everything that brings us closer one to another. . . .'

The fears of the Federal Council were not unfounded. Feeling has often prevailed over reason, and more than once the limits of propriety have been exceeded. Individual failings have come to light in quarters where they would have been least expected, for example, upon the staff of the army. Distrust, irritation and misunderstanding were the result, and only by constant effort, together with the admission and reparation of faults committed, has the gulf at last been closed which for some time threatened to separate the different sections of the Swiss people and to mar their long and salutary friendship.

This digression was perhaps not essential to my subject. But no account of democracy in Switzerland would be complete without reference to the army, and I must leave the reader to judge whether

it was possible to speak of the army without touching upon neutrality and without saying a word about the temporary suspension of democratic institutions which has so sorely tried the patience of the people.

XIII

THE FUTURE OF DEMOCRACY IN SWITZERLAND

IN treating of the referendum, the initiative and the other rights of the Swiss people, I endeavoured to elucidate the more important of their results. With occasional exceptions, direct democracy has conduced to progress, and has cleared away obstacles which hinder it under other political systems. As we saw, it draws all classes together in the equality of the ballot; it sets a limit to revolutionary agitation by depriving it of all pretexts; it restrains turbulent minorities by assuring them a share in public affairs; it frequently involves discord between the legislature and other political authorities; it displays little favour towards bureaucracy and big salaries, and in this respect tends at times to practise economy at the expense of efficiency; it welcomes social reform but recoils from extensive bureaucratic machinery; it worships governmental stability and retains its public men in office even till the verge of senility; it professes dislike for militarism, and sometimes is induced with difficulty to make the

sacrifices required in the interest of national defence; it shows a decided preference for graduated taxes upon capital and income. Had we been able to investigate its effects in other spheres, for example, in the departments of education and public works, we should have found it inclined to open-handed liberality, multiplying institutions for higher, secondary, elementary and professional education. Wherever we looked, we should find it well disposed towards innovations brought forward at the right moment with substantial backing, and yet remaining all the time attached to its traditions. An excursion into the world of journalism would have shown us a serious Press—serious sometimes to boredom—a Press which so far has displayed no alacrity in the use of extreme violence or in the exploitation of sensational news, a Press which is free from the tutelage of great financial interests and is subsidized neither by governments nor by public men. It would seem indeed, that Switzerland illustrates the profound truth of Tocqueville's remark that 'extreme democracy anticipates the danger of democracy.'

It must not be inferred that everything is perfect in Switzerland. Under all political systems man is still man—a being whose lower instincts can only be kept under with constant effort. A wide gulf may be fixed between the form and the spirit of democracy. Especially since the war, some writers have taken it upon themselves to

draw up, as it were, an indictment against the Swiss people. The Swiss have been reproached with falling away from their ancient republican dignity, as they did before in the eighteenth century, and earlier still at the time when the military capitulations inaugurated all kinds of corruption. They have been reproached with their concern for material interests and their dependence upon other countries which have led to the development of the tourist industry and the introduction of foreign capital in their industries. They have been reproached with falling far below that democratic ideal of the heroic ages which history reveals. Too often, indeed, may signs be noticed of overweening presumption. One would desire a feeling of deeper unity between the different classes, greater independence of the possessors of power, and more real equality where equality, if only as an expression of the respect due to human nature, lends dignity rather than discredit. The political apathy of a section of the middle class and, in one section of the working class, threats of violence and even violence itself, provide additional proof that the pre-requisites of a democratic State are not sufficiently understood. In spite of the hostility which has inspired these criticisms, it is impossible to deny them some measure of truth. The words which the great American moralist, Channing, addressed to the people are always true: 'Do not allow yourselves

to be lulled into security by the flattery which is poured upon you, as if your share of national sovereignty made you the equals of the noblest of your race. Many things and great you lack. The remedy is not in the ballot box, nor in the exercise of your political rights; it is in the conscientious education of yourselves and of your children.'

The true strength of Swiss democracy must rest not only upon the most perfect political forms, but even more upon the education and training provided by the family, the school, the church, the army, or any other institution which may serve that end. It is not mere chance, but the realization of an urgent need that makes the development of popular rights coincide with numerous efforts for the improvement of civic education, in the widest sense of the phrase. Only by striving to inculcate in all its members a true conception of the rights and duties of citizenship can the Swiss democracy gain what it still lacks, and emerge triumphant from the tests and trials which the future has in store.

It was to be feared at one time that the future would be gloomy. Small countries, which have suffered so much under the hegemony of great ones, seemed threatened with extinction by triumphant imperialism. More recently, however, the prospect is more reassuring. The talk which is heard on all sides of the League of Nations, the great aim

advanced by M. Léon Bourgeois before the war, is symbolic of a better future, based on something utterly different from the brute strength of conquering militarism. Nowhere has that aim been welcomed more joyfully than in Switzerland. For Switzerland herself represents the League in miniature through her achievement in uniting races and languages which elsewhere are given up to pitiless conflicts. Though she has taken many centuries to reach her present happy situation, it is not too much to look forward to a time when other nations, after an experience of bloodshed and catastrophes without parallel, will follow her path in their turn and ultimately reach the same goal, the establishment of the United States of the World which was the dream of Kant and many another great philosopher. Federative unions of various groups of European countries are already mooted, and the idea of still wider federations which will lay the foundations of universal peace grows apace. The memorable declarations of President Wilson have opened a vast prospect to those who do not despair of humanity.

But we must not allow our dreams to outrun reality. For the moment, the reality still bears a decidedly modest aspect. While some speak of a League of Nations, there are others who can only conceive of leagues of nations. Although, in a recent pamphlet, Viscount Grey, the former British Foreign Secretary, advocates in the final

settlement as a means of avoiding still more terrible wars a League of Nations which will impose certain restrictions and even certain onerous obligations upon each of its members, others will not listen to suggestions for the least restriction upon sovereignty. As for the Socialists, they hold that there can be no League of Nations without the abolition of capitalism. In a word, the idea as yet assumes many different forms. The point to be emphasized, however, is the almost general adhesion which it receives and the serious attention which is paid to it both by governments and by private societies established for the purpose.

No country is more interested than Switzerland in the success of these noble efforts. If the present state of affairs should continue, the neutrality and security of Switzerland would fare ill in face of the advance in military technique, guns of ever increasing range, and coalitions of military forces which she could not hope to rival. She could not possibly support the terrific expenditure which modern implements of war and the training of troops to operate them involve. As the cradle of the Red Cross and the headquarters of many international organizations, Switzerland seems marked out more than any other country by her needs and her inclinations to concentrate her efforts upon this object. The League of Nations should surely be one of her most fruitful fields

of action and the chief object of her foreign policy.

During the sitting of the National Council on the 6th June 1918, the President of the Confederation, M. Calonder, delivered a speech upon this subject, from which I should like in concluding to quote certain passages. After announcing that the Federal Council had requested a distinguished jurist, Professor Max Huber, to report upon all questions relating to a future international judicial organization and to draft plans and proposals for submission to a consultative committee, M. Calonder recalled what had been done so far in Europe towards the foundation of an international judicial order, including the Hague Conferences.

'The predominant idea of the Conference of 1899, the limitation of armaments, was in no wise achieved. Agreements for the pacific settlement of international disputes represent timid compromises and betray a scepticism which shrinks from going beneath the surface and tackling the heart of the problem. If, from the midst of the widespread distress in which the war has plunged the world, we look back upon the Conferences of 1899 and 1907, we cannot but think that a terrible tragedy was enacted at those meetings. With exaggerated mistrust and with jealous anxiety for their absolute freedom of action, the nations vied one with another in avoiding anything which, in the interest of peace, was likely to bind them together seriously

and effectively, because every bond of that description was conceived to be incompatible with their sovereignty! And now? Now all those States are mutually dependent by a thousand different bonds, which none of them has the power to unravel. The sole hope of safety lay in the force of humanity, of humanity converted to the ideas of international friendship and goodwill. But the great fatality occurred; while national laws within the States accentuated the abuses of competition and the class-struggle, conflict of interest between them swept away the comparatively feeble barriers of treaties and international law and consigned Europe to the horrors of war.'

Elsewhere in his speech, M. Calonder said:

'National tradition is and remains the most active source of creative power. Our ideal for humanity is federative, not cosmopolitan. And as the international commonwealth of the future will never imply the abandonment of national tradition by the different peoples, it will strengthen and deepen, rather than weaken, the citizen's feeling of duty towards his own State. We should strenuously reject as the worst of sophistries any attempt by a Swiss soldier to obtain exemption from his military obligations on the score of the hoped-for union of peoples. So long as our country is exposed to the danger of war, it is the sacred duty of all her sons to hold themselves ready to give both life and property in defence of her

freedom and independence; he who is incapable of fulfilling his duty to his own country cannot be a useful member of the international commonwealth.

"The inference from all I have said can only be that the consolidation of the principle of law and peace in international relationships is the ultimate aim of Switzerland's foreign policy. For us this is no new ideal. It springs naturally from our history and national traditions. Our democracy includes four linguistic groups which, loyal to their irrevocable covenant, are conscious of their profound unity as one people on the basis of mutual respect. We are attached to our country just because it embraces this rich diversity in its local and linguistic characteristics. It is the most precious element in our spiritual heritage. Assuredly, diversity of tongue and variety of ethnical elements involve complications, difficulties, and sometimes dangers: the history of Switzerland shows it only too well. But we have succeeded in the past, and shall succeed in the future, in welding together the different powers and tendencies of our people in the great crucible of creative national labour. In truth, fruitful co-operation within the federal family depends directly upon the strength of national solidarity, a spirit of devotion in all trials, and absolutely reciprocal confidence. And complete confidence can only be conceived in an atmosphere of full freedom and sincere amity. The greatest poet of German Switzerland, the ardent

patriot Gottfried Keller, describes the general policy of our country in the phrase: "Friendship in freedom." Let us remain faithful to this national motto. Then, despite passing discords and momentary excitements, we can rest assured that we shall not fail in our historic mission. The history of Switzerland is that of the development of international relations in miniature. And the political life of our State as a whole is, in form, the precursor of the future League of Nations. Never has the international mission of a people been more clearly and definitely marked out than that which lies before Switzerland—to be the harbinger of concord between all peoples by proving to the world, through its own example, that populations differing in race and language may unite to form a happy commonwealth on the basis of mutual confidence, freedom and equality of rights.'

Turning in conclusion to concrete proposals, the President of the Confederation pointed out that the first practical result to be aimed at should be the creation of institutions for the peaceful settlement of disputes between States. Justiciable questions should be investigated and determined according to strict judicial procedure; they should be referred to international arbitration, and States must be induced to pledge themselves without reservation to submit justiciable disputes within certain well-defined limits to a court of arbitration. Non-justiciable disputes, on the other hand, should

be dealt with by special machinery for mediation. Here, again, it must not be left to the States involved to decide whether or no such mediation shall be resorted to in the case of an impending dispute. All States must be required to bind themselves to await the suggestions of the mediating authority before having recourse to war. The possibility of persuading them to recognize these proposals as binding from the outset is a delicate question which remains to be examined more thoroughly. It is highly important to ensure that any institution set up, whether court of arbitration or mediatory body, should be permanent and enjoy a certain amount of independence.

The crucial point of the whole problem is the question of sanction. Sanction might conceivably take the form of economic pressure or even military force, but the possibility of applying either will depend upon the degree of solidarity in the international commonwealth. This extremely delicate aspect of the problem cannot be shelved; we must study it with the greatest care, taking into consideration the peculiar judicial and economic situation of Switzerland.

The principal object to be achieved is to guarantee peace by devising means for preventing international differences from developing into dangerous conflicts; but it is not the only object to which we should apply ourselves. The development of international judicial organization in general

must not be neglected: the structure begun at the Hague must be systematically perfected.

Finally, we must not forget that home and foreign politics are closely allied. Although the incidents of war disturb and obstruct the progress of society, one can no more expect lasting peace between States so long as the various sections and classes of all peoples welter in a hideous struggle for wealth and power.

M. Calonder's speech provides an apt summary of the present position of the problem and of those aspects of it which are peculiar to Switzerland.

I conclude this brief study with the hope that, in the future development of European political institutions, statesmen and other representatives of the people will be enabled to take advantage of the experiments with democratic institutions which Switzerland has carried out. The keen perception and sympathetic intuition of great poets has often penetrated and forecast the future. So should it be with the author of *La Légende des Siècles* when he wrote that 'Switzerland will always have the last word in history.' But this honour will only be hers if she strives unceasingly and ever more earnestly to be worthy of it.

LAUSANNE,
14th September 1918.

APPENDIX

THIS work was in the hands of the printers when, quite unexpectedly, those great events occurred which brought the war to an end, overthrew all the thrones in Germany and produced a political and social confusion the end of which we cannot yet foresee. Switzerland was not completely spared. Encouraged probably by the result of the popular vote of the 13th October on proportional representation, and anxious to take advantage of the state of mind created by the food problem, the extreme elements in the Socialist movement thought the moment a favourable one in which to achieve their own ends. Already during the war, several Socialist leaders had proceeded to Petrograd via Berlin, and had entered into close relationship with the leading Bolsheviks. Without official recognition, a Bolshevist legation was established in Bern which conspired to maintain in our country one of those hotbeds of revolution to which the Russian maximalist party looks for its salvation.

It is in Zürich that the revolutionary element is most numerous and most daring. A few weeks

ago, the cantonal government discovered unmistakable indications of a plot to overthrow its sovereignty by violent methods. The revolutionaries intended to take possession of the arsenal and to set fire to public buildings.

At the request of the cantonal government, the Federal Council sent troops to Zürich for the maintenance of order and public safety. At the same time, it requested the Bolshevist legation to leave the country, and decided to deport a Russian agitator, a woman who had been working for years in Switzerland. The Socialist executive committee characterized these measures as provocative, called upon the Federal Council to repeal them, and upon its refusal to do so called a general political strike (*Landesstreik*). A new government—probably the executive committee itself—was to carry out, until something better could be drafted, the following program:

1. The immediate re-election of the National Council on the basis of proportional representation. 2. Woman suffrage and the removal of all sex disabilities. 3. The introduction of a system of compulsory work for all. 4. A forty-eight hour working week in all public and private undertakings. 5. The conversion of the existing army into a democratic army. 6. Revictualling to be arranged with the co-operation of the agricultural producers. 7. Old age and health insurance. 8. State monopolies of imports and exports.

9. The redemption of the entire National Debt by the holders of wealth.

This transition program was calculated to rally all the various elements in the Socialist party.

What was to be the upshot of it? Would the revolutionary movement be strong enough to impose its will and overthrow the government? Or, indeed, would the federal authorities find themselves forced to acquiesce? Would a century of democracy see for its reward the triumph of anarchy?

Events have not taken the course anticipated by the Socialist executive committee. Far from allowing itself to be intimidated, the Federal Council immediately summoned together the Federal Chambers, and ordered the accelerated mobilization of the first division of the Army, drawn from Vaud, Geneva, and Valais, and of units from other divisions, comprising in all some fifty battalions of infantry and numerous special troops. The session of the Chambers, which lasted for three days, ended in a vote expressing unqualified approval of the measures adopted by the Federal Council. The leaders of the non-Socialist groups—Radicals, Liberals, Democrats, Catholic Conservatives—were unanimous in their condemnation of the outrage by means of which a violent minority had sought to establish their supremacy in place of that of the recognized institutions of the nation. All denounced vigorously an enterprise peculiarly criminal in a country where

the people enjoy the most extensive rights and possess all the means of introducing by constitutional methods such reforms as they feel to be necessary.

In the meantime, the mobilization of the first division was accomplished in a highly satisfactory manner. The attempts to instil the spirit of insubordination into our citizen army met with indignant protest. In all the principal cities, law-abiding men organized themselves; Citizen Guards were formed to support existing authority; shooting, gymnastic, musical and sports clubs, societies of young men engaged in trade or in agriculture, all proclaimed their determination to defend democratic institutions against revolutionary assaults with the utmost vigour.

From the commencement, the strike had only a partial success, especially in French Switzerland where a very large number of workmen refused to down tools and obey the word of command. Its gravity lay in the support of the printing trade, by which the strike stifled the voice of public opinion and enabled the executive committee to spread the most disquieting rumours about the temper of the army, and in that of the employees of the federal railways whom the Socialist leaders had won after many years of persistent propaganda. But even on the second day of the strike, vigorous protests arose from the body of railwaymen against the manner in which their organization had been rushed

into lending its support. Feeling that they had with them the whole-hearted support of the Chambers and of public opinion, the Federal Council on the 13th November presented an ultimatum to the strike committee calling for the termination of the strike before midnight. The committee tried to evade, to make stipulations, to obtain guarantees which it could have represented as concessions or promises. The Federal Council refused point blank, and at half-past one at night—the procrastination had lasted for two hours—the executive strike committee gave in unconditionally. It recoiled from the prospect of a civil war in which it knew defeat to be inevitable. In the proclamation which it issued to the strikers, it gave as the reason for its capitulation the attitude of the troops and the railway employees. They should have added to this the attitude of the great majority of the population, who showed their hostility towards the general strike with extraordinary force and decision.

Certainly, all is not over, and the Socialist committee has taken care to warn us that the fight was only postponed; but the Swiss Press is none the less justified in celebrating the result of the conflict as a triumph for democracy. That the people has reacted so strongly against this attempt to spoke the working of our institutions, that the army has fulfilled its duties so cheerfully, is proof that the Swiss nation knows that it possesses

all desirable methods for the bringing about of timely reforms.

It is too fully aware of its powers and its rights to bow voluntarily under the yoke of an extreme minority, a class dictatorship, after having thrown off that of the old oligarchies. If popular rights had not been in existence, if it had been impossible to oppose revolution by democracy, the situation would certainly have been much more critical.

It is probable that one consequence of these events will be a further development of the rights of the people. It seems desirable that the Federal Chambers should have the right to submit certain questions directly to the people without the preliminary step of the initiative, as is done in several cantons, and in this way deprive revolutionaries of their last pretext of acting in the name of the people whose rights they usurp.

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